

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 WESTERN DIVISION

4 ROBERT TERRACINO, - Docket No. 5:22-cv-015-FL
 5 et al., -
 6 Plaintiff, - New Bern, North Carolina
 7 v. - February 1, 2024
 8 TRIMACO, INC., - Claim Construction Hearing
 9 Defendant. -

10 TRANSCRIPT OF CLAIM CONSTRUCTION HEARING
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

12 APPEARANCES:

13 For the Plaintiffs: Byers Law
 14 By: Duncan G. Byers
 15 1769 Jamestown Road
 16 Suite 120
 17 Williamsburg, VA 23185
 18 (757) 317-2779
 19 Ward and Smith, P.A.
 20 By: W. Ellis Boyle
 21 PO Box 33009
 22 Raleigh, NC 27636
 23 (919) 277-9100
 24 For the Defendant: Barnes & Thornburg LLP
 25 By: Deborah E. Pollack-Milgate
 11 S. Meridian Street
 Indianapolis, IN 46204
 (317) 231-7339
 Barnes & Thornburg LLP
 By: John M. Moyer
 3340 Peachtree Road NE
 Suite 2900
 Atlanta, GA 30326
 (404) 264-4006

1 Court Reporter: Tracy L. McGurk, RMR, CRR
2 413 Middle St.
3 New Bern, NC 28560
4 (419) 392-6626
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23 Proceedings recorded by mechanical stenography,
24 transcript produced by notereading.
25

I N D E X

<u>No.</u>	<u>Description</u>	<u>Page</u>
	Whereupon Plaintiff's Exhibit 1 is admitted into evidence	60
	Whereupon Plaintiff's Exhibit 2 is admitted into evidence	72

- - -

1 (Commenced at 10:14 a.m.)

2 THE COURT: Good morning. We have the

00:00:04 3 matter of claim construction in this case to take up

00:00:08 4 today, Terracino v. Trimaco.

00:00:17 5 We'll start with introductions. I'd invite

00:00:19 6 the plaintiffs to put their identities on the record.

00:00:24 7 MR. BOYLE: Good morning, Your Honor.

00:00:25 8 Ellis Boyle from the Wake County Bar. And I'm local

00:00:28 9 counsel. And if I can introduce to the Court, please,

00:00:31 10 from the Virginia Bar and the Patent Trade Bar Mr.

00:00:36 11 Duncan Byers.

00:00:38 12 MR. BYERS: Good morning, Your Honor. It's

00:00:39 13 a pleasure to be here.

00:00:42 14 THE COURT: For the defendant?

00:00:43 15 MR. MOYE: Good morning, Your Honor. John

00:00:45 16 Moye with the North Carolina Bar with Barnes & Thornburg

00:00:49 17 on behalf of the defendant. With me is my colleague

00:00:52 18 from Barnes & Thornburg, Deborah Pollack-Milgate.

00:00:56 19 THE COURT: Welcome to you all.

00:00:57 20 Would you like to make an opening statement?

00:01:00 21 I'll start with the plaintiff.

00:01:02 22 MR. BYERS: I would, just a short one, Your

00:01:05 23 Honor, just to provide the Court with a little bit of

00:01:08 24 background.

00:01:10 25 Unlike a number of patent infringement cases

00:01:14 1 that I'm aware the Court has dealt with, this one is
00:01:17 2 fairly straightforward. We're not talking about a
00:01:20 3 patent or an invention that includes many items that
00:01:25 4 need to be interpreted by people of skill in the art or
00:01:30 5 the like. It's fairly straightforward.

00:01:33 6 And in order to perhaps help the Court a
00:01:36 7 little bit, I have demonstrative exhibits so that the
00:01:40 8 Court can look at them while we're going through the
00:01:42 9 discussions. I have two of the drop cloths at issue.
00:01:51 10 One of them is one that has been examined and a corner
00:01:56 11 of it opened so that the Court can actually look at it
00:01:58 12 and see what we're talking about in terms of the layers
00:02:01 13 and the like. And just for clarity's sake, to make
00:02:07 14 sure that the defendants understand that I'm not
00:02:11 15 bringing in somebody else's drop cloth or the like, I
00:02:14 16 have one of theirs that is unopened so the Court can
00:02:17 17 compare both of them. Do you want to take a look at
00:02:20 18 it?

00:02:20 19 MS. POLLACK-MILGATE: Your Honor, may I just
00:02:22 20 ask a question? The drop cloth that you have, the lower
00:02:25 21 one, are you saying that's a Trimaco drop cloth?

00:02:30 22 MR. BYERS: Yes.

00:02:30 23 To be clear, Your Honor, at a certain point
00:02:33 24 Trimaco started adding orange stitching to their drop
00:02:39 25 cloths. This is a drop cloth that was manufactured by

00:02:42 1 Trimaco before they started actually adding the orange
00:02:47 2 stitching to it. But it's the same manufacturing
00:02:50 3 process; it's the same drop cloth. I'd invite you to
00:02:53 4 take a look at it.

00:02:54 5 THE COURT: So what you've got in your hands
00:02:56 6 are two versions of what Trimaco makes?

00:03:00 7 MR. BYERS: The only difference between
00:03:02 8 them --

00:03:02 9 THE COURT: The stitching?

00:03:03 10 MR. BYERS: The color of the stitching, Your
00:03:06 11 Honor.

00:03:06 12 THE COURT: So the unpackaged one is pre
00:03:07 13 orange stitching?

00:03:10 14 MR. BYERS: That's right.

00:03:11 15 THE COURT: And the packaged one is the way
00:03:12 16 it's being produced now?

00:03:14 17 MR. BYERS: That's correct, Your Honor.
00:03:16 18 Those are the only discernable differences between the
00:03:19 19 two of them.

00:03:19 20 THE COURT: Okay.

00:03:21 21 MR. BYERS: Again --

00:03:27 22 MS. POLLACK-MILGATE: I want to confirm for
00:03:28 23 the record. The product, I believe, that counsel has
00:03:30 24 is the Stay Put Plus. So there have been two different
00:03:34 25 products, one of which has two layers, and another one

00:03:38 1 that has three layers. So I want to make sure that the
00:03:41 2 record is clear that we are talking about a
00:03:43 3 three-layered embodiment; is that correct?

00:03:47 4 MR. BYERS: Well, that's part of what we'll
00:03:50 5 be discussing today.

00:03:51 6 THE COURT: I asked for an opening
00:03:52 7 statement, and I don't think that's what I got.

00:03:55 8 MR. BYERS: I'm sorry. I'm sorry, Your
00:03:58 9 Honor.

00:03:59 10 THE COURT: So can we sort this out as we go
00:04:01 11 along.

00:04:02 12 MR. BYERS: We can, Your Honor. To be
00:04:03 13 clear, they're exactly the same in terms of the layers.
00:04:07 14 Again, the only reason that I have these is so that Your
00:04:09 15 Honor can actually look.

00:04:10 16 THE COURT: Do you want to hand them up?

00:04:12 17 MR. BYERS: I would.

00:04:13 18 MS. POLLACK-MILGATE: Your Honor, I hate to
00:04:15 19 do this, but I'm going to throw one more objection out
00:04:19 20 there, because aside from some fairly limited
00:04:21 21 circumstances, the allegedly infringing product is not
00:04:24 22 all that relevant to claim construction. So it's
00:04:28 23 inappropriate to be reading these claims in light of
00:04:31 24 examining the product which is alleged to be infringed.

00:04:35 25 THE COURT: And you say there's a two-ply

00:04:37 1 and a three-ply. And this is the two-ply?

00:04:40 2 MS. POLLACK-MILGATE: I believe this is a
00:04:41 3 three-ply.

00:04:43 4 MR. BYERS: Both of them are the structure
00:04:45 5 of the alleged infringing products, Your Honor. And
00:04:49 6 again, I'm not relying on them in order to do anything
00:04:56 7 other than educate the Court as to exactly what it is
00:04:59 8 that we're talking about. And for some background on
00:05:05 9 that, Your Honor, these drop cloths were originally
00:05:07 10 manufactured under license based on my client's patent
00:05:12 11 by Trimaco. And so these are -- these read directly on
00:05:18 12 my client's patent, which is the patent at issue.

00:05:22 13 I'm not asking the Court to look at them in
00:05:25 14 terms of whether or not there's actual infringement or
00:05:29 15 the like. That's not the purpose behind this, just to
00:05:32 16 be clear. So if the Court would like to look at them.

00:05:35 17 THE COURT: Sure.

00:05:36 18 MS. POLLACK-MILGATE: Your Honor, I'm going
00:05:37 19 to beg your indulgence one more time, because counsel
00:05:40 20 has suggested that these products were made under a
00:05:44 21 license because there's infringement. And again, these
00:05:50 22 are not infringing products. So if counsel is going to
00:05:53 23 discuss these as infringing, these are embodiments of
00:05:56 24 the invention, and so on, that's improper.

00:05:58 25 MR. BYERS: I understood, Your Honor, we're

00:06:00 1 here on a claim construction argument.

00:06:01 2 THE COURT: Let me just look at them. Then
00:06:03 3 I'm going to give them right back to you, and I'm going
00:06:05 4 to hear your opening statement. If you'd approach the
00:06:10 5 clerk.

00:06:10 6 (Items are given to the Court.)

00:06:27 7 THE COURT: What's this?

00:06:28 8 MR. BYERS: It's a corner cut off, Your
00:06:31 9 Honor, so that the Court can see what we're talking
00:06:33 10 about when we talk about layers of structures on these.
00:06:35 11 It's purely for edification for the Court so you can see
00:06:46 12 what we're talking about in terms of the drop cloths,
00:06:47 13 how they're constructed, and the functionality. That's
00:06:48 14 it.

00:06:49 15 Again, to be clear, I'm not attempting to
00:06:51 16 ask the Court to make any determinations as to
00:06:54 17 infringement.

00:06:54 18 THE COURT: So you say this is a three-ply?

00:06:57 19 MR. BYERS: That's the way they're
00:07:00 20 constructed, according to the plaintiffs.

00:07:03 21 And there is -- the patent at issue has an
00:07:13 22 embodiment that discusses an impervious layer. There
00:07:16 23 is a layer in there that they're claiming is impervious.

00:07:20 24 THE COURT: Okay. The impervious layer is
00:07:23 25 underneath this?

00:07:24 1 MR. BYERS: In between the two. That's
00:07:27 2 correct, Your Honor.

00:07:31 3 THE COURT: And a two-ply, what's the
00:07:33 4 difference?

00:07:34 5 MR. BYERS: The difference would be, Your
00:07:35 6 Honor, that top layer would be the canvas, and the
00:07:39 7 bottom layer would be the bumpy sticky surface that you
00:07:43 8 feel, and without the plastic in between them.

00:07:45 9 THE COURT: So, in other words, the paint
00:07:46 10 could go through?

00:07:48 11 MR. BYERS: Possibly.

00:08:12 12 THE COURT: Okay.

00:08:17 13 Mr. Byers, you're from Williamsburg?

00:08:20 14 MR. BYERS: That's correct, Your Honor.

00:08:23 15 THE COURT: That's where I grew up.

00:08:25 16 MR. BYERS: Really? We moved there two and
00:08:29 17 a half years ago. We were actually in Virginia Beach
00:08:33 18 and Chic's Beach. But we have a little one, and it got
00:08:38 19 a little bit too problematic with a small child. But
00:08:41 20 we love it there.

00:08:43 21 Your Honor, the case, as you're aware,
00:08:46 22 revolves around a fairly straightforward invention. My
00:08:49 23 client's patent covers the construction of a drop cloth
00:08:56 24 for painting and other purposes that's intended to
00:08:59 25 provide two functions. The first one being to protect

00:09:09 1 the surface, which an ordinary drop cloth does. And it
00:09:12 2 does that through the use of a surface top layer that is
00:09:18 3 an absorbent material. And then the real "gee whiz" of
00:09:22 4 the invention is the addition of the bottom of it, which
00:09:25 5 is a material that has a grid of a rubber material that
00:09:36 6 includes bumps of various sizes and heights in it.
00:09:42 7 That's essentially it.

00:09:47 8 It's our contention that we have an
00:09:53 9 infringement issue because the prosecution history and
00:09:55 10 the claims of this patent would cover the drop cloth
00:10:01 11 that Trimaco is manufacturing and selling, even with the
00:10:05 12 addition of that intermediate layer.

00:10:11 13 Now, with regards to the claim construction,
00:10:16 14 the first claim does say "A non-skid protective cloth or
00:10:22 15 pad consisting of." And the term "consisting of" in
00:10:26 16 the scope of this invention has been interpreted by the
00:10:28 17 defendants to mean that it's limited to and can only
00:10:32 18 have the two layers that are in the claim itself, the
00:10:38 19 absorbent top layer and the non-slip bottom layer.
00:10:43 20 Then once you add something else in between them,
00:10:46 21 regardless of what it is, that that takes their drop
00:10:51 22 cloth out of the scope of the claim.

00:10:54 23 However, as we've argued, a review of the
00:10:59 24 prosecution history and of the claims shows that not
00:11:04 25 only was one of the embodiments contemplated by the

00:11:08 1 inventors and the Patent Office to include additional
00:11:12 2 layers, including an impervious layer, but even after
00:11:17 3 the language of Claim 1 was changed to "consisting of,"
00:11:23 4 that the Patent Office and the inventors continued to
00:11:29 5 treat the invention as one that could have more than
00:11:34 6 just the two layers.

00:11:36 7 The prosecution history that the defendants
00:11:39 8 are relying on with regards to the rejections based upon
00:11:43 9 multiple layers and the like. As we've pointed out both
00:11:48 10 in our claim construction brief and in our reply to
00:11:52 11 their opening claim construction brief, it is limited to
00:11:56 12 rejections based upon the top layer having multiple
00:12:01 13 layers, not the invention as a whole having multiple
00:12:05 14 layers.

00:12:07 15 And so when the Court's looking at the claim
00:12:12 16 construction here and what the defendants are claiming
00:12:15 17 my clients gave up during the prosecution of the patent,
00:12:21 18 they're two different interpretations of what happened.
00:12:24 19 And we believe based upon the prosecution history, it's
00:12:27 20 very clear that the discussion that was going on between
00:12:31 21 my clients and the Patent Office with regards to the
00:12:34 22 multiple layer issue was limited to the top layer and
00:12:40 23 not the layers of the invention as a whole. And that's
00:12:45 24 borne out by the prosecution history, by the arguments
00:12:48 25 made by the patent examiner in issuing rejections for

00:12:54 1 the claims, and in the arguments made in response to
00:12:57 2 them.

00:12:58 3 And obviously the question of what
00:13:02 4 "consisting of" means in the scope of this patent is
00:13:07 5 going to be dispositive here. It's probably, frankly,
00:13:10 6 the single most dispositive question before the Court in
00:13:13 7 terms of interpreting the claims in this patent.

00:13:16 8 So if we move on to -- yes, Your Honor.

00:13:20 9 THE COURT: I said okay.

00:13:25 10 MR. BYERS: The second issue before the
00:13:31 11 Court is the question of what the term "adjacent" means.
00:13:38 12 And I believe that we can dispose of that fairly
00:13:41 13 quickly. As the Court is aware, unless there's a
00:13:46 14 reason not to give claim terms their ordinary and
00:13:51 15 customary meaning, every claim term should be given its
00:13:54 16 ordinary and customary meaning.

00:13:56 17 "Adjacent" means what "adjacent" means.
00:13:59 18 Our proposed construction is "lying near or close to,
00:14:02 19 but not necessarily touching." For example, I have a
00:14:08 20 house. My neighbor's house is adjacent to it. But we
00:14:13 21 have a yard and fence in between them, but they're still
00:14:16 22 considered adjacent.

00:14:17 23 The defendants are interpreting "adjacent"
00:14:20 24 to mean that they must necessarily be touching.

00:14:23 25 So in laymen's terms it would be the

00:14:25 1 difference between saying that the two houses, in order
00:14:29 2 to be adjacent, would have to be townhouses and directly
00:14:33 3 attached to each other.

00:14:35 4 We dispute that. We think that the ordinary
00:14:40 5 and customary meaning of adjacent does not mean attached
00:14:43 6 to, does not mean adhered to, does not mean fused with.
00:14:47 7 It just means close by or near to it. And we believe
00:14:51 8 that the ordinary and customary meaning supports that.

00:14:56 9 The next issue that the Court has to address
00:15:01 10 is the claim language that says "Said downward
00:15:06 11 projecting bumps comprising bumps having at least two
00:15:09 12 different circumferential sizes."

00:15:15 13 It's our contention that that claim
00:15:18 14 language, as supported by the specification, means that
00:15:24 15 you can have in the structure, which is the bottom
00:15:29 16 sticky non-skid structure that keeps the canvas cover
00:15:35 17 from sliding around while you're using it, the way it's
00:15:39 18 constructed and the way it's claimed in the patent means
00:15:42 19 that you can have these bumps having multiple different
00:15:49 20 circumferential sizes and that they're not limited to a
00:15:56 21 measurable perimeter as claimed by -- as argued by the
00:16:00 22 defendants. There's nothing in the patent itself,
00:16:04 23 there's nothing in the specification, and there's
00:16:09 24 nothing in the prosecution history that includes the
00:16:11 25 "measurable" limitation in it.

00:16:18 1 Our proposed construction is simply that the
00:16:23 2 downward projecting bumps where each of the bumps has
00:16:26 3 one of two or more different circumferences.

00:16:32 4 And again, circumference is an ordinary and
00:16:35 5 customary term that's well known. So we believe that
00:16:38 6 adding a measurable boundary or perimeter to it
00:16:44 7 impermissibly narrows the scope of the claim because in
00:16:48 8 part -- and this is one of the reasons why I wish the
00:16:52 9 Court to look at the drop cloths in addition to the
00:16:56 10 record, is that it's readily apparent that you don't
00:16:59 11 need to measure these bumps. An ordinary person can
00:17:04 12 look at them and see this one has a bigger circumference
00:17:06 13 than this one does.

00:17:07 14 And so we think that the defendant's
00:17:10 15 construction impermissibly narrows it to being boundary
00:17:15 16 or measurable -- "a measurable boundary or perimeter."

00:17:21 17 The next issue that the Court is addressing
00:17:24 18 here is the claim language that says "Said height of
00:17:27 19 bumps having a smaller of said at least two different
00:17:31 20 circumferential sizes being greater than said height of
00:17:36 21 bumps having said larger of said at least two
00:17:39 22 circumferential sizes."

00:17:43 23 I apologize, Your Honor. I'm a patent
00:17:45 24 attorney, but I also trip over claim language sometimes.

00:17:50 25 Our proposed construction for this, as

00:17:53 1 supported by the claims of the patent and the
00:17:56 2 specification, is that there's a comparison when you
00:18:03 3 have one bump that you look at that has a smaller
00:18:08 4 circumference in comparison to another bump that has a
00:18:12 5 larger circumference, that that first bump may have a
00:18:19 6 height that is greater than the height of the second
00:18:22 7 bump.

00:18:24 8 The defendant's interpretation is that each
00:18:27 9 of the circumferentially smaller bumps must have a
00:18:32 10 greater height than that of the circumferentially larger
00:18:35 11 bumps.

00:18:35 12 But there's nothing in the claim and there's
00:18:37 13 nothing in the specification and there's certainly
00:18:41 14 nothing in the prosecution history that limits the claim
00:18:44 15 such that each of the smaller bumps must have a greater
00:18:50 16 height than that of a circumferentially larger bump, the
00:18:56 17 bumps with the larger circumference.

00:19:00 18 And the specification in this patent
00:19:03 19 actually teaches the exact opposite and says in
00:19:08 20 alternate embodiments: Larger and smaller bumps
00:19:12 21 respectively may have a substantially identical height.
00:19:18 22 In still other embodiments: Smaller bumps may have a
00:19:19 23 height larger than larger bumps.

00:19:21 24 So defendants are attempting to limit the
00:19:24 25 claim so that each smaller bump that you find on the

00:19:27 1 back of the constructed drop cloth must have a higher
00:19:33 2 height than any bump that has a larger circumference.

00:19:37 3 THE COURT: Could you say that again?

00:19:39 4 MR. BYERS: The defendant's position is that
00:19:43 5 when you compare any two bumps -- there's only two sizes
00:19:47 6 of bumps; you have smaller bumps and larger bumps in
00:19:50 7 terms of the circumference, the base of the -- the
00:19:55 8 circumference around the base.

00:19:57 9 Their position is, the way I read it, is
00:19:59 10 that in order to construe the claim properly, any two
00:20:08 11 bumps that you would pick on the bottom of this, on the
00:20:11 12 non-slip surface, the one with the smaller circumference
00:20:16 13 must have a height greater than a bump that you compare
00:20:20 14 it to that has a larger circumference.

00:20:20 15 THE COURT: Okay.

00:20:23 16 MR. BYERS: That's not how the claim reads,
00:20:24 17 and that's not how the specification reads. The
00:20:28 18 specification specifically contemplates that you do have
00:20:34 19 two different sized bumps relative to each other, one
00:20:40 20 with a smaller circumference compared to one with a
00:20:43 21 larger circumference. And in some cases that bump with
00:20:48 22 the smaller circumference has a greater height than the
00:20:50 23 one with the circumference that's larger. But
00:20:54 24 specifically says that -- and this is tied directly into
00:21:00 25 manufacturing processes and the like -- that they can

00:21:03 1 have the same height, and they can have different
00:21:06 2 heights where the one with the larger circumference has
00:21:09 3 a height greater than the smaller one, but there are
00:21:12 4 bumps on this surface where bumps of smaller
00:21:18 5 circumference have a height that's higher than ones that
00:21:22 6 have a larger circumference.

00:21:24 7 And so we believe that the defendants are
00:21:26 8 attempting to impermissibly narrow the scope of the
00:21:30 9 claim, especially when read in light of the
00:21:32 10 specification, to saying that any comparison of two
00:21:36 11 bumps, the one with the smaller circumference must have
00:21:38 12 a higher -- must have a greater height than the one that
00:21:43 13 has the larger circumference. And that's not the way
00:21:45 14 the claim reads, and that's not the way the
00:21:48 15 specification reads.

00:21:51 16 The next issue is a testing procedure, and
00:22:01 17 the claim language says "Whereby when said lower major
00:22:04 18 surface of said resilient" -- "single resilient layer is
00:22:07 19 placed on a support surface, a slide of coefficient of
00:22:10 20 friction measure in accordance with TAPPI T548
00:22:14 21 specification is greater than approximately 0.75."

00:22:19 22 Now, our interpretation is exactly what the
00:22:27 23 specification says and exactly what the claim says.
00:22:29 24 There is a testing procedure. The testing procedure
00:22:33 25 was used and is clearly defined and is publicly

00:22:39 1 available. And so the claim is: We applied this
00:22:43 2 testing procedure; this is the result we got.

00:22:49 3 The defendant's position is that proposed
00:22:51 4 construction is indefinite.

00:22:54 5 And I will admit to some uncertainty as to
00:23:01 6 exactly what it is the defendants are trying to say,
00:23:06 7 because it appears that -- I'm sure my colleagues will
00:23:12 8 clarify this for me. It seems that their position is
00:23:15 9 that: Well, this testing procedure wasn't intended to be
00:23:19 10 tested on this particular type of product; and so
00:23:22 11 therefore, it's indefinite.

00:23:30 12 That, in my interpretation, seems to be a
00:23:35 13 functionality argument rather than an argument that it's
00:23:40 14 indefinite. For example, if I had a claim where I was
00:23:45 15 testing the brakes on a new car, and I claimed that I
00:23:52 16 tested it by locking the brakes and sliding it down a
00:23:56 17 ski jump slope. That saying that: Well, that's not a
00:24:02 18 proper test to test the brakes, that may well be an
00:24:05 19 argument farther down the road, but it's certainly not
00:24:09 20 an indefinite argument. And that's how I interpret
00:24:11 21 this. And I welcome some clarification on that. But
00:24:13 22 that's the best I can make of it.

00:24:20 23 The next issue is the single term
00:24:24 24 "amorphous."

00:24:25 25 Again, going back to the legal standard that

00:24:27 1 a term that has an ordinary and customary meaning should
00:24:30 2 be given its ordinary and customary meaning. We have
00:24:35 3 provided the Court with the definition of what
00:24:38 4 "amorphous" means. And so our proposed construction
00:24:42 5 for that term is "irregularly shaped," which is
00:24:46 6 supported by the dictionary definition that we provided
00:24:50 7 to the Court.

00:24:51 8 The defendants have proposed that that term
00:24:55 9 should be construed as meaning "having an indefinite
00:24:59 10 shape but a measurable boundary or perimeter." Again,
00:25:02 11 as before, it's our position the defendants are
00:25:05 12 impermissibly attempting to read limitations into the
00:25:10 13 claims that are not there. There's nothing in the
00:25:14 14 claim or the specification that says that an amorphous
00:25:18 15 shape must be measurable in order to be covered in our
00:25:23 16 claim. And there's certainly nothing in it that limits
00:25:28 17 it to a measurable boundary or perimeter. An amorphous
00:25:33 18 shape is simply irregularly shaped.

00:25:38 19 The final issue, Your Honor, is, again, the
00:25:42 20 testing issue. Where the claim language says "Whereby
00:25:45 21 when tested in accordance with TAPPI T548 specification,
00:25:50 22 an average slide angle is no less than approximately 40
00:25:55 23 degrees."

00:25:55 24 Again, defendant's position is that that's
00:25:57 25 indefinite.

00:25:58 1 Our position is the claim language is
00:26:02 2 absolutely specific, and the specification supports it
00:26:05 3 and gives the testing procedure and the results, and so
00:26:08 4 an indefinite -- saying a claim is indefinite is
00:26:14 5 improper. There may be other arguments that they could
00:26:17 6 make, as I mentioned, but I don't think that
00:26:19 7 indefiniteness is one of them.

00:26:22 8 THE COURT: Okay.

00:26:23 9 MR. BYERS: Unless the Court has any
00:26:24 10 questions on that, Your Honor.

00:26:25 11 THE COURT: I've got questions, but let me
00:26:31 12 hear your arguments.

00:26:35 13 MS. POLLACK-MILGATE: Thank you, Your Honor.
00:26:37 14 We have a presentation here that we'll be referring to
00:26:41 15 in the course of today, if I could approach.

00:26:44 16 THE COURT: All right. Is this the first
00:26:50 17 time plaintiff is seeing your book?

00:26:53 18 MS. POLLACK-MILGATE: This is the first time
00:26:54 19 we have shown this to anybody.

00:26:57 20 THE COURT: Okay. Are you using
00:27:06 21 electronics, or are we going to flip the pages here?

00:27:09 22 MS. POLLACK-MILGATE: We're going to flip
00:27:11 23 the pages, but I will try not to flip us through every
00:27:14 24 page.

00:27:14 25 What I am thinking is counsel and I had

00:27:16 1 discussed -- first of all, I'll give you an opening
00:27:19 2 statement.

00:27:19 3 Counsel and I then had discussed that
00:27:21 4 potentially it might make sense to deal with the terms
00:27:24 5 on an individual basis. So what I would like to do,
00:27:26 6 Your Honor, if it's okay, is when we get to that point,
00:27:28 7 refer you to certain pages along with argument.

00:27:33 8 THE COURT: All right.

00:27:35 9 MS. POLLACK-MILGATE: I'd like to start off
00:27:42 10 with what plaintiffs began with, which was they said
00:27:45 11 that the invention was straightforward. And counsel
00:27:48 12 mentioned that there was an absorbent top layer, and
00:27:52 13 then there was a resilient grid underneath. And then I
00:27:57 14 believe he said that's it, that's our invention. It's
00:28:01 15 essentially these two elements.

00:28:04 16 The problem with that is that those were not
00:28:07 17 the claims that were actually allowed by the Patent
00:28:09 18 Office.

00:28:13 19 So if we look at the claims that were
00:28:15 20 actually first sought to be patented, and then what was
00:28:19 21 actually allowed, with respect to the initial claim, the
00:28:24 22 very first application that was filed, plaintiffs sought
00:28:28 23 claims that were directed to a non-skid protective cloth
00:28:32 24 or pad comprising -- and you'll hear a lot today about
00:28:37 25 "comprising" versus "consisting of." There was a woven

00:28:43 1 upper layer.

00:28:44 2 And if you want to follow along, I didn't
00:28:47 3 intend for you to follow along on this one, but it's
00:28:50 4 slide 3. There's the woven upper layer, then there's a
00:28:53 5 lower resilient layer, having an upper and lower major
00:28:58 6 surface that's adjacent to the upper layer. Then you
00:29:04 7 have a means for fastening said upper woven layer.

00:29:08 8 So it was very broad. It really only had
00:29:11 9 these three elements, a top, a bottom, and something to
00:29:15 10 fasten the two together.

00:29:17 11 However, during the course of prosecution,
00:29:21 12 the plaintiff narrowed this claim again and again and
00:29:24 13 again. And that's because they wanted to get a patent,
00:29:27 14 and they wanted to get patent claims. And in order to
00:29:31 15 do that, they had to broker a deal with the Patent
00:29:32 16 Office to get something that the Patent Office would be
00:29:36 17 assured was actually patentable.

00:29:39 18 So they changed "comprising" to "consisting
00:29:44 19 of" -- which you'll hear a lot about today, Your
00:29:47 20 Honor -- closing the claim up.

00:29:50 21 And at the same time they changed the
00:29:52 22 language from "comprising" to "consisting of," they also
00:29:57 23 specified that there was a "single lower layer," and a
00:30:02 24 "single upper layer."

00:30:05 25 They also had to specify the specific means

00:30:09 1 for attachment. So it couldn't be any attachment.

00:30:12 2 The attachment had to be by stitching.

00:30:15 3 That wasn't enough.

00:30:17 4 They added TAPPI limitations. I'll call
00:30:22 5 those the TAPPI limitations. So they had to add some
00:30:24 6 clarification with respect to what parameters, what
00:30:29 7 specific parameters the drop cloth that they chose to
00:30:33 8 claim would meet. Those were the TAPPI limitations.

00:30:35 9 And then they also had to specify -- and
00:30:38 10 this was critical. This was actually the last thing
00:30:41 11 that happened. They had to specify the bumps.

00:30:44 12 So I chuckled a little bit, Your Honor, when
00:30:47 13 Your Honor asked a question about: Could you say that
00:30:49 14 again? Because this is a mouthful to try to get this
00:30:52 15 out. But in order to get this patent claim allowed,
00:30:56 16 they had to specify that the bumps smaller
00:31:01 17 circumferentially would have a taller height than the
00:31:07 18 larger bumps circumferentially. That's what they had
00:31:12 19 to do. And that, Your Honor, the patent examiner was
00:31:17 20 confident was not in the prior art.

00:31:20 21 So that is the bargain. As we walk through
00:31:23 22 today, Your Honor will see how at each point in time
00:31:27 23 plaintiffs were required to narrow their invention to
00:31:30 24 get something patentable. That's the story here.

00:31:34 25 One small point -- and then I will sit down,

00:31:38 1 and we can go through the claims one by one, if that's
00:31:40 2 okay with the Court -- is that this construction of
00:31:48 3 "consisting of" versus "comprising," counsel talked very
00:31:52 4 much about how he has a different interpretation based
00:31:56 5 on looking at the prosecution history. That
00:31:59 6 interpretation is contrary to the plain language of the
00:32:03 7 claim. It is black letter law that "consisting of" is
00:32:07 8 closed. This is one of the most settled propositions
00:32:11 9 of patent law that exist. It's about the first thing
00:32:15 10 you learn in the law when you learn how to read patent
00:32:19 11 claims.

00:32:21 12 Counsel's construction, the Terracinos',
00:32:25 13 plaintiffs' construction is contrary to patent law.
00:32:27 14 It's contrary to the plain language of the claim. It
00:32:31 15 would be hard to imagine putting the world on notice
00:32:35 16 that this is a -- when a person of ordinary skill in the
00:32:43 17 art reads the claim, understands it's closed, to ask
00:32:46 18 them to then go to the prosecution history and figure
00:32:49 19 out if there's some interpretation under which it's
00:32:52 20 actually opened, that cannot be the law. It's not the
00:32:55 21 law. And as counsel has stated, it is dispositive to
00:33:00 22 this matter. Thank you.

00:33:03 23 THE COURT: Do you have any case that
00:33:07 24 decides what's covered by the term "consisting of" at
00:33:15 25 claim construction?

00:33:18 1 MS. POLLACK-MILGATE: Yes, Your Honor.

00:33:19 2 There is. On slide 8 --

00:33:30 3 THE COURT: Now, you're using numbers.

00:33:32 4 MS. POLLACK-MILGATE: I'm sorry. They are

00:33:34 5 very small.

00:33:35 6 THE COURT: Where are they?

00:33:38 7 MS. POLLACK-MILGATE: They are at the bottom

00:33:39 8 right.

00:33:39 9 THE COURT: Okay.

00:33:39 10 MS. POLLACK-MILGATE: They're very

00:33:41 11 unintrusive.

00:33:41 12 MR. BYERS: They're inside the blue.

00:33:43 13 THE COURT: I've of got it now. Thanks.

00:33:48 14 MS. POLLACK-MILGATE: That's on slide 8.

00:33:50 15 It's also in our briefing.

00:33:54 16 There is also another case that is in our

00:33:57 17 briefing, which is the case that counsel referred to.

00:34:00 18 This will come up later. I'm trying to remember where

00:34:06 19 I have it in my notes. I will find that for you.

00:34:09 20 But the other case is this is a factual

00:34:12 21 scenario. And it's the one instance that counsel

00:34:14 22 identified where "consisting of" was found -- well, if

00:34:23 23 there is something that's unrelated to the invention

00:34:26 24 entirely, then it cannot be a way to avoid infringement.

00:34:33 25 So in this other case -- and again, I will

00:34:37 1 get Your Honor the citation -- it was a chemical kit.
00:34:41 2 And then the defendant said: Well, I'd like to avoid
00:34:44 3 infringement because I have a spatula that goes along
00:34:47 4 with the chemical kit. That is the instance in which
00:34:51 5 "consisting of" and "comprising," that's where
00:34:54 6 "consisting" finds its limits. But otherwise the
00:34:57 7 language is entirely closed.

00:35:02 8 THE COURT: What do you think, Mr. Byers?

00:35:05 9 MR. BYERS: Your Honor, I agree that at
00:35:09 10 first cut in interpreting patent claims that "consisting
00:35:13 11 of" signals closed language.

00:35:17 12 However, the case law from the Federal
00:35:24 13 Circuit has made it abundantly clear that that's only
00:35:28 14 true if that's how the Patent Office and the inventors
00:35:38 15 understood the term, and only if you're talking about
00:35:42 16 elements that are related to the invention.

00:35:46 17 And I believe the case that my colleague was
00:35:54 18 referring to is the *Nature Simulation Systems* case.
00:36:02 19 And that is --

00:36:10 20 No, I'm sorry, Your Honor. I misspoke. I
00:36:20 21 will get that citation.

00:36:22 22 MS. POLLACK-MILGATE: I have it. It's
00:36:23 23 *Norian*, N-o-r-i-a-n. The citation is 363 F.3d 1321.

00:36:38 24 MR. BYERS: So as the Federal Circuit
00:36:41 25 explained in that case, Your Honor, it is not the

00:36:45 1 beginning and the end of the conversation when the
00:36:49 2 signaling language "consisting of" shows up in a claim.
00:36:54 3 If you have a potentially infringing article, and that
00:36:59 4 article includes something that is not essentially part
00:37:08 5 of the functionality of the invention being claimed,
00:37:14 6 then that does not get you around the presumably closed
00:37:19 7 language of "consisting of."

00:37:21 8 And in that case counsel is correct, it was
00:37:23 9 a case where it was essentially a chemical kit. And
00:37:29 10 the infringing device included a spoon to stir the
00:37:34 11 materials with. The defendants in that case claimed
00:37:38 12 that the spoon got them outside of the scope of the
00:37:40 13 claims of the patent because of the "consisting of"
00:37:44 14 language.

00:37:44 15 The Federal Circuit was very clear and said:
00:37:47 16 No, no, no. That's in addition to and cannot get you
00:37:52 17 outside the scope of the claims.

00:37:56 18 In what we're talking about, we're talking
00:37:58 19 about "consisting of an absorbent layer and a non-skid
00:38:04 20 layer." Adding something to it that's not covered by
00:38:13 21 the scope of or included as part of the invention
00:38:18 22 doesn't take it out of the scope of the patent claims.

00:38:24 23 This is the way I've been thinking of it,
00:38:26 24 Your Honor: If I patented a wall, it then has two
00:38:31 25 surfaces; one of them is a sound proofing surface on one

00:38:36 1 side, and the other side is a solid metal structure to
00:38:41 2 avoid damage from impact. So you have a wall; one side
00:38:46 3 is soundproof, and one side is indestructible material.
00:38:51 4 And in the specification it says you can do other things
00:38:54 5 inside the wall you wanted to, like you could spray the
00:38:57 6 inside of the soundproofing wall with something to keep
00:39:00 7 it waterproof. Right? But those aren't the
00:39:05 8 functional elements of the invention itself. It
00:39:07 9 doesn't add to the functionality; it doesn't decrease
00:39:12 10 the functionality. It's something that you could do to
00:39:15 11 it, like adding streamers to bicycle handles.

00:39:19 12 Now, if you added something that increased
00:39:22 13 the non-skid characteristics or the absorption by the
00:39:27 14 woven top, but that's not what we're talking about.
00:39:30 15 What we're talking about is looking at the claim, and
00:39:34 16 deciding whether or not it's limited only to those two
00:39:39 17 layers with nothing else in between them. And in order
00:39:43 18 for defendant's interpretation to be correct, you could
00:39:47 19 have somebody that made one of the drop cloths and put
00:39:52 20 in a layer of bubble wrap, and now they're not
00:39:57 21 infringing -- right -- even though it has nothing to do
00:39:58 22 with the functionality or the intent of the invention.

00:40:01 23 And that's the distinction that the Federal
00:40:04 24 Circuit made in the *Norian* case, is that, yes,
00:40:09 25 "consisting of" limits it, but it limits it essentially

00:40:15 1 to the functionality of what it is that the invention
00:40:18 2 does. That spoon didn't change the functionality of
00:40:21 3 the chemical process at all.

00:40:26 4 And again, to go back to one of the things
00:40:30 5 that I pointed out earlier, when you look at the
00:40:33 6 prosecution history, it's clear from the prosecution
00:40:37 7 history that the examiner and the inventors during the
00:40:43 8 prosecution were not talking about limiting layers of
00:40:48 9 the product as a whole. All of the objections and all
00:40:52 10 of the responses to it with regards to the multiple
00:40:56 11 layers were multiple layers of the top layer. So
00:41:04 12 there's no other place to add an additional layer to it
00:41:11 13 without -- add an additional layer to it that would take
00:41:15 14 it outside of the scope of the claims unless you added
00:41:18 15 something else that was a new top layer or something
00:41:20 16 else that was a new bottom layer. You add something in
00:41:25 17 between; you've still got the top layer, and you've
00:41:28 18 still got the bottom layer, whether it's bubble wrap,
00:41:31 19 whether it's streamers added to bicycle handles, or
00:41:35 20 whether it's spraying the back side of a wall to make it
00:41:38 21 waterproof. You're not changing the fundamental
00:41:41 22 characteristics of the invention, and you're not
00:41:45 23 changing the scope of the claims. And that was what
00:41:48 24 the *Norian* case was essentially all about.

00:41:51 25 THE COURT: So if I'm following you,

00:41:53 1 anything between the two, anything inserted between the
00:41:59 2 two, you would make the same argument?

00:42:05 3 MR. BYERS: No, Your Honor, I would not. I
00:42:07 4 would not. If it deals with the functionality -- in
00:42:14 5 the *Norian* case, if the additional element had been an
00:42:19 6 additional reagent in the chemical reaction, now you've
00:42:23 7 got something that would get it outside of the scope of
00:42:26 8 the claims, because it would change the functionality or
00:42:29 9 change how it functions. Right?

00:42:32 10 But in this case, again, I go back to my
00:42:35 11 opening statement, Your Honor. This is fairly
00:42:37 12 straightforward. We're talking about a top layer that
00:42:41 13 absorbs and a bottom layer that keeps the thing from
00:42:44 14 sliding anywhere. Right? Adding a layer of plastic
00:42:49 15 in there doesn't change the absorption of the top layer,
00:42:53 16 and it doesn't change the non-skid properties. As I
00:42:57 17 said, it might as well be bubble wrap. It might as
00:43:00 18 well be anything you can think of except for -- and I
00:43:05 19 know it sounds like I'm making it very narrow, and I'm
00:43:09 20 not trying to suggest that. But what I am saying is
00:43:11 21 that if the Court were to countenance their argument in
00:43:18 22 light of *Norian* and in light of the Federal Circuit's
00:43:21 23 clear understanding that, yeah, "consisting of" is
00:43:24 24 closed, but you need to be careful with it because that
00:43:27 25 doesn't mean that anything you add to it takes it

00:43:30 1 outside of the scope of the claims. It has to be
00:43:35 2 something that's related to what the invention does and
00:43:37 3 the functionality of the invention. Okay? Adding
00:43:40 4 training wheels to a bicycle, that has to do with the
00:43:43 5 functionality of the bicycle. Adding streamers to it
00:43:48 6 has nothing to do with the bicycle functioning to get
00:43:51 7 down the street.

00:43:52 8 THE COURT: What do you see this middle
00:43:54 9 layer doing here?

00:43:57 10 MR. BYERS: It's simply a layer of plastic
00:43:59 11 that they put in there that they are saying makes it
00:44:02 12 impervious.

00:44:05 13 But again, my clients have that in the
00:44:11 14 specification. They say you could add that, but it
00:44:13 15 doesn't change the functionality of it. It has two
00:44:18 16 functions: it's got an absorbing top surface, and it's
00:44:21 17 got a bottom surface that keeps it from sliding.

00:44:25 18 So, I mean, if you follow the defendant's
00:44:31 19 argument without considering what the Federal Circuit
00:44:38 20 has said about it, you could add in glow lights so you
00:44:45 21 can see it when the lights are out, and it's an
00:44:49 22 additional layer. It's a sheet that has lighting
00:44:51 23 properties; and so therefore, we don't infringe. And
00:44:55 24 that's what the Federal Circuit in *Norian* warned
00:44:55 25 against.

00:45:00 1 And so in this case claiming that we can
00:45:05 2 basically add anything we want to in between the layers,
00:45:09 3 and it takes it outside the scope of the claims because
00:45:12 4 you said "consisting of," fails -- our position is that
00:45:17 5 it fails, and it fails for two reasons. It fails
00:45:20 6 because of the *Norian* analysis, and it fails because
00:45:24 7 their claim that the "consisting of" language narrows it
00:45:31 8 to only two layers to the entire invention is not
00:45:35 9 supported either by the specification or by the
00:45:39 10 prosecution history. The prosecution history makes it
00:45:42 11 clear that what they are talking about and the
00:45:44 12 rejections and the responses to the rejections were
00:45:47 13 focused solely on the top layer.

00:45:50 14 THE COURT: Is this a fair question for the
00:45:52 15 Judge to ask the plaintiff: Can you give me an example
00:45:57 16 of an additional layer that in your opinion would not
00:46:01 17 infringe?

00:46:03 18 MR. BYERS: An additional layer that would
00:46:05 19 not infringe? I mean, if there was an additional layer
00:46:15 20 that enhanced the non-skid properties. For example, if
00:46:18 21 you added a layer of adhesive that filled in some of the
00:46:26 22 spaces in the non-slip lower surface, absolutely. That
00:46:32 23 would be an additional layer that would read directly on
00:46:37 24 the functionality of the invention.

00:46:42 25 If you added something like that, then yes,

00:46:47 1 because I think that falls squarely within the Federal
00:46:51 2 Circuit's interpretation of what the "consisting of"
00:46:54 3 language means.

00:46:56 4 THE COURT: Let me ask you this. It might
00:46:59 5 be a very stupid question. But does that middle layer
00:47:05 6 that the defendant added change the TAPPI T548?

00:47:21 7 MR. BYERS: It does not, Your Honor. That
00:47:23 8 testing procedure merely tests how the bottom surface
00:47:32 9 adheres to a surface under certain circumstances,
00:47:36 10 sliding down a gradient and things like that. If you
00:47:41 11 have this layer in there, it doesn't reach down between
00:47:43 12 the gaps.

00:47:45 13 THE COURT: But it keeps the paint or
00:47:48 14 whatever it is that fell on the top layer from soaking
00:47:55 15 through to the grippy bumpy layer?

00:48:00 16 MR. BYERS: I don't know that it does, Your
00:48:02 17 Honor. That's not part of the record, number one.

00:48:04 18 And number two, there is no limitation in
00:48:06 19 here that says that: Well, you can only pour a gallon
00:48:10 20 of paint on it. It says it's an absorbent top
00:48:15 21 material.

00:48:15 22 THE COURT: So the TAPPI T548, it's done
00:48:20 23 with a clean cloth is what you're saying?

00:48:24 24 MR. BYERS: That's my understanding, Your
00:48:26 25 Honor, yes. I've never seen any indication from the

00:48:29 1 record or from any of the testing that somebody soaked
00:48:34 2 it in gallons of paint and then tested it.

00:48:37 3 THE COURT: Gotcha.

00:48:40 4 MR. BYERS: But again, it doesn't impact the
00:48:43 5 absorptive properties of the woven material that are the
00:48:48 6 top surface, and it doesn't impact the bottom surface.

00:48:52 7 THE COURT: You came up with an example that
00:48:54 8 changed the grippy surface by making it stickier, right?
00:49:01 9 That was your example when the Judge asked perhaps the
00:49:03 10 unfair question: Can you tell me what would be a layer
00:49:06 11 that wouldn't infringe? And what you focused on was
00:49:11 12 giving me an example, as I recall, of something that
00:49:13 13 changed the grippiness functionality of that bottom
00:49:20 14 layer. Right?

00:49:22 15 MR. BYERS: If you had some adhesive that --
00:49:24 16 if you had a material that, say, had greater tackiness
00:49:29 17 than the underlying rubber layer for specific purposes,
00:49:33 18 say you're working on sheet metal and you need it to be
00:49:36 19 tackier, so you have a material -- I don't know; I'm
00:49:40 20 trying to think of something. I have a five-year-old,
00:49:42 21 and she likes things that you slap against the wall and
00:49:45 22 they stick. So a material like that that perhaps had
00:49:48 23 greater tackiness so that it would actually enhance by
00:49:54 24 contacting a surface through the gaps in the bottom,
00:49:59 25 then -- and obviously that's not a specific element of

00:50:04 1 this case, but I would imagine you'd have a pretty good
00:50:07 2 argument that that would take it out of the scope of the
00:50:10 3 claims.

00:50:12 4 But again, the federal circuit has made it
00:50:14 5 clear that even though "consisting of" is traditionally
00:50:19 6 closed language and has to be considered that way, it's
00:50:21 7 got to be considered that way in the scope of the
00:50:25 8 invention and what it does and not what it doesn't do.

00:50:28 9 THE COURT: Okay.

00:50:34 10 Did you want to respond to that?

00:50:36 11 MS. POLLACK-MILGATE: I do, Your Honor, if I
00:50:37 12 may.

00:50:38 13 So what I think we've heard is a new test
00:50:43 14 for determining whether or not "consisting of" actually
00:50:48 15 means what it says, that is with respect to
00:50:53 16 functionality and whether the functionality is changed
00:50:57 17 by the additional element. That is not a test I am
00:51:02 18 aware of under the case law. So it is a legal
00:51:07 19 proposition that does not exist.

00:51:12 20 This is not a hard question.

00:51:14 21 I want to back up again to the *Multilayer*
00:51:18 22 case and just read from that. "The presumption that a
00:51:22 23 claim term set off by the transitional phrase
00:51:26 24 'consisting of' is closed to unrecited elements is at
00:51:31 25 least a century old and has been reaffirmed by our court

00:51:34 1 and other courts." And that's 831 F.3d 1350.

00:51:41 2 THE COURT: Remind me. That holding was in
00:51:43 3 the context of what?

00:51:48 4 MS. POLLACK-MILGATE: That holding is in the
00:51:49 5 context of exactly the argument that we have right now,
00:51:54 6 which is that actually the claim should be construed to
00:51:58 7 be open-ended.

00:52:00 8 THE COURT: So claim construction is going
00:52:02 9 on in that case?

00:52:03 10 MS. POLLACK-MILGATE: Your Honor, I'm going
00:52:04 11 to check that for you 100 percent, because I want to
00:52:06 12 make absolutely sure.

00:52:07 13 However, the claim construction process is
00:52:09 14 the process of determining of what these words mean as a
00:52:13 15 matter of law. And so if I need to provide some backup
00:52:19 16 support "consisting of" versus "comprising" is an issue
00:52:24 17 for claim construction, and I will make sure that we
00:52:26 18 nail that down.

00:52:27 19 THE COURT: Okay.

00:52:28 20 MS. POLLACK-MILGATE: So it's easy when we
00:52:31 21 take a look at this to see, as I stated already in just
00:52:35 22 the opening statement that basically our plain reading
00:52:40 23 of this claim is we have Elements A, B, and we have C,
00:52:46 24 and that's it. Those are the three elements.

00:52:50 25 And Claim 1 was amended from "comprising" to

00:52:55 1 "consisting of," indicating that I am not entitled to an
00:52:59 2 embodiment that is open ended. It is only going to
00:53:03 3 consist of Elements A, B, and C.

00:53:06 4 And this was also reaffirmed in addition of
00:53:10 5 the language "a single absorbent upper layer and a
00:53:15 6 single lower resilient layer."

00:53:17 7 This is also consistent with the
00:53:21 8 specification which describes an embodiment that has two
00:53:25 9 layers, and that's Figure 1. And if you want to follow
00:53:30 10 along, I'm on slide 17.

00:53:34 11 And at slide 17 we've also quoted from the
00:53:38 12 language of the patent as well, "The non-skid protective
00:53:43 13 cloth or pad 100 has two layers - a woven upper layer
00:53:48 14 102 and a lower, resilient layer 104."

00:53:56 15 Now, what's really interesting about this
00:53:59 16 issue is the prosecution history. And we've outlined a
00:54:03 17 couple of key points on slide 18. The Terracinos
00:54:10 18 narrowed their claims. We already talked about the
00:54:13 19 fact that they started off with "comprising." That was
00:54:15 20 their language. The claim was rejected.

00:54:19 21 And on the next slide you can see again
00:54:22 22 exactly what they did. They changed it to "consisting
00:54:27 23 of," and they added this language "single."

00:54:31 24 But here's the real point too, in addition
00:54:34 25 to closing it up.

00:54:35 1 And let me back up a second. First of all,
00:54:39 2 the plain and ordinary language is it's consisting of.
00:54:42 3 To the extent there was any doubt on that, you take a
00:54:44 4 look at the prosecution history. You see that the
00:54:48 5 plaintiffs narrowed their claims. And not only that,
00:54:50 6 the examiner understood exactly that, that they had
00:54:55 7 narrowed their claims.

00:54:56 8 So this is on Slide 19. This is the
00:54:59 9 language from the prosecution history. This is what
00:55:02 10 the examiner stated. The examiner stated: "Applicant
00:55:07 11 has amended the preamble language of the claim by
00:55:10 12 closing up the recitation and making it a two-layered
00:55:16 13 structure." It could not be more clear than that.

00:55:22 14 So whatever plaintiffs want to say about:
00:55:24 15 It really means this and the understanding of the
00:55:27 16 examiner, the actual prosecution history, when you read
00:55:32 17 it, it shows the precise opposite. The examiner
00:55:37 18 understood that they had narrowed the language of the
00:55:41 19 claim, closed it up, and made it a two-layered
00:55:44 20 structure.

00:55:47 21 The plaintiffs' argument is really they're
00:55:51 22 trying to construe the language "consisting of" to mean
00:55:54 23 "at least." And that is absolutely not what happened
00:55:58 24 here.

00:56:00 25 And the last point that I'll make in

00:56:02 1 relation to this that I think is really important is
00:56:05 2 that not only was it clear from the prosecution history
00:56:09 3 and the examiner's statement that this was a two-layered
00:56:13 4 product, but when they first filed the patent
00:56:19 5 application, they actually had patent claims that were
00:56:21 6 directed to an embodiment that would have a third layer,
00:56:25 7 and they were forced to abandon those. So not only did
00:56:30 8 they narrow Claim 1, they actually abandoned dependent
00:56:34 9 claims that would have claimed a third impervious layer.
00:56:40 10 It makes no sense to argue, as the plaintiffs are doing,
00:56:46 11 that this impervious third layer is both not related to
00:56:52 12 the invention and in the specification.

00:56:58 13 THE COURT: So we're talking about what you
00:57:00 14 call a Stay Put Plus canvas?

00:57:04 15 MS. POLLACK-MILGATE: Correct. Yes.

00:57:05 16 THE COURT: Don't you make a Stay Put with
00:57:07 17 two layers that plaintiff claims is infringing?

00:57:10 18 MS. POLLACK-MILGATE: Yes, Your Honor, there
00:57:11 19 is also is a two-layer product that Trimaco has made in
00:57:15 20 the past. Trimaco has paid license fees for all or
00:57:21 21 substantially all of those products. That's why -- and
00:57:26 22 counsel can speak for the Terracinos as well. But
00:57:30 23 that's why I understand the focus to be obviously so
00:57:33 24 heavily on Stay Put Plus, because that's the only
00:57:37 25 product that is really substantively --

00:57:39 1 THE COURT: Do you still make and sell Stay
00:57:42 2 Put canvas?

00:57:44 3 MS. POLLACK-MILGATE: No, Your Honor.

00:57:44 4 THE COURT: When did you stop, if you
00:57:48 5 recall?

00:57:49 6 MS. POLLACK-MILGATE: About two years ago.

00:57:52 7 THE COURT: Is that when you all had your
00:57:53 8 falling out?

00:57:54 9 MS. POLLACK-MILGATE: There was a -- so my
00:57:58 10 understanding is that those are not related, that there
00:58:02 11 was a decision that the Stay Put Plus is a superior
00:58:05 12 product.

00:58:06 13 THE COURT: When did you fall out? When
00:58:10 14 was the falling out?

00:58:11 15 MS. POLLACK-MILGATE: I don't know if I
00:58:12 16 would call it a falling out, but the licensing agreement
00:58:18 17 was canceled -- was terminated, according to the terms
00:58:23 18 of it, at -- I'll have to double check. I believe it
00:58:31 19 was the beginning of 2021.

00:58:38 20 MR. BYERS: That sounds correct, Your Honor.
00:58:40 21 I can add some additional color to it.

00:58:43 22 THE COURT: So kind of around about when you
00:58:45 23 stopped selling the Stay Put canvas?

00:58:49 24 MS. POLLACK-MILGATE: It was around the same
00:58:50 25 time, yes. Yes, Your Honor.

00:58:52 1 MR. BYERS: If I may, Your Honor.

00:58:52 2 THE COURT: Okay.

00:58:54 3 MR. BYERS: It was at the time that Trimaco
00:58:58 4 got themselves a patent issued that included the almost
00:59:03 5 verbatim language of the specification from my client's
00:59:07 6 patent for the manufacture of the product -- not the
00:59:11 7 product itself; they tried to add claims claiming the
00:59:14 8 product that was included in my client's patent and was
00:59:19 9 summarily rejected by the Patent Office. And so they
00:59:23 10 have an issued patent for the manufacture of these drop
00:59:28 11 cloths, a method for the manufacture of them. And once
00:59:30 12 they got that, that's when they terminated the licensing
00:59:37 13 agreement.

00:59:38 14 And to be clear, I do not have any reason
00:59:41 15 to -- I don't have any reason to dispute that Trimaco or
00:59:45 16 Trimaco's counsel is misrepresenting to the Court what
00:59:50 17 they're doing with regards to the Stay Put as opposed to
00:59:53 18 the Stay Put Plus. I do know that Stay Put canvas drop
00:59:57 19 cloths are still available on the market. Now, whether
01:00:01 20 that's backlog sitting in warehouses or the like,
01:00:03 21 whether or not Trimaco has manufactured a pile of them
01:00:07 22 and sold them off to middlemen, I do not know the answer
01:00:11 23 to that.

01:00:11 24 THE COURT: Is there a claim in this case
01:00:13 25 related to the Stay Put canvas?

01:00:16 1 MR. BYERS: There is, Your Honor.

01:00:16 2 THE COURT: And remind me what it is.

01:00:19 3 MR. BYERS: That it infringes the same
01:00:24 4 patent.

01:00:24 5 THE COURT: That has to be decided in this
01:00:26 6 case?

01:00:27 7 MR. BYERS: That's correct, Your Honor. So
01:00:29 8 even if the Court were to decide that the "consisting
01:00:36 9 of" language takes the Stay Put Plus out completely,
01:00:40 10 there's still the outstanding question of what exactly
01:00:43 11 happened with the sales and the termination of the
01:00:45 12 licensing agreement and the like. So there still would
01:00:48 13 be issues to be resolved.

01:00:49 14 THE COURT: And that would be the next phase
01:00:52 15 of discovery?

01:00:53 16 MR. BYERS: Yes, I think we'd end up getting
01:00:55 17 into that in the next phase.

01:00:57 18 I do have a citation reference for the
01:00:59 19 Court, but I'll wait until --

01:01:01 20 THE COURT: Okay.

01:01:01 21 MS. POLLACK-MILGATE: Your Honor, a couple
01:01:02 22 points to clarify. So there are other claim
01:01:06 23 construction terms before the Court that would also
01:01:08 24 eliminate the other product, the Stay Put. So
01:01:13 25 Trimaco's allegation is also that the Stay Put, all by

01:01:16 1 itself, would not infringe. That was the one point
01:01:20 2 that I wanted to make.

01:01:21 3 But the second point --

01:01:23 4 THE COURT: So you're putting all your eggs
01:01:26 5 in the basket of a three-tiered product; but the other
01:01:33 6 product that is a two-tiered product, you're saying you
01:01:39 7 have defenses to infringement?

01:01:44 8 MS. POLLACK-MILGATE: Your Honor, the
01:01:45 9 *Markman* process, our contention is that under a proper
01:01:49 10 construction of the terms that we've put before Your
01:01:52 11 Honor there would be no infringement under either
01:01:55 12 product.

01:01:55 13 THE COURT: Could you just briefly give me
01:01:57 14 your opening statement on why that would be true with
01:02:00 15 regard to the two-tiered product?

01:02:04 16 MS. POLLACK-MILGATE: Yes. Absolutely,
01:02:06 17 Your Honor. Because -- and let me get my limitations.

01:02:11 18 With respect to the claim limitation
01:02:17 19 requiring that the "height of bumps having the smaller
01:02:20 20 of said at least two different circumferential sizes
01:02:24 21 being greater than said height of bumps having said
01:02:27 22 larger of said at least two circumferential sizes," our
01:02:34 23 view is that what that states is that, in the way it's
01:02:40 24 drafted and also in connection with the overall language
01:02:42 25 of that claim limitation, that refers back to a grid of

01:02:49 1 bumps, plural, the height of the bumps having these two
01:02:56 2 different sizes, wherein the bumps that are smaller
01:03:02 3 circumferentially have a taller height than the ones
01:03:07 4 that are larger circumferentially. And that is not
01:03:14 5 true of the Stay Put products. Again, that was a
01:03:22 6 limitation that the examiner was required to add.

01:03:27 7 And what's one of the largest problems with
01:03:34 8 the plaintiffs' construction on this term -- and if I
01:03:39 9 could refer Your Honor to slide 32, this is another
01:03:58 10 instance in which the Terracinos were required to narrow
01:04:03 11 their invention. So while they started off in their
01:04:07 12 specification with a couple of different embodiments for
01:04:10 13 the sizes and the shapes of the bumps, they were
01:04:14 14 required to narrow it on the basis of Zegler, which you
01:04:18 15 can see has a number of different bumps and sizes that
01:04:23 16 were connected by a resilient grid. And that's exactly
01:04:26 17 what the patent examiner found.

01:04:30 18 In response to that, in response to this
01:04:33 19 rejection over Zegler, then they were required to
01:04:37 20 actually narrow their invention.

01:04:40 21 And on the previous slide, and this is in
01:04:43 22 our briefing as well, slide 31, we've shown just -- and
01:04:49 23 I think this is very helpful, again, because this
01:04:53 24 language is very easy to trip over. This is really the
01:04:56 25 embodiment that's on page 31 at the bottom that they

01:04:59 1 ended up with, which is an instance in which you can
01:05:03 2 see, Your Honor, that "in other embodiments, smaller
01:05:08 3 bumps 106b may have a height larger than the larger
01:05:13 4 bumps." And we've drawn that out so you can see what
01:05:17 5 it would look like. That's what the Patent Office said
01:05:22 6 was allowable in view of the prior art, including
01:05:30 7 Zegler.

01:05:31 8 And just briefly on 33, this is where -- and
01:05:34 9 again, this is in our briefing as well. But on slide
01:05:37 10 33 we have the precise language from the patent examiner
01:05:42 11 himself. He names all sorts of prior art. We have
01:05:47 12 Zegler and Stichter and Bell and Tresino and Harrison.
01:05:53 13 And he states: "These combinations fail to teach or
01:05:57 14 suggest the limitation requiring that the 'downward
01:06:05 15 projecting bumps each having a height, said height of
01:06:07 16 bumps having the smaller of said at least two different
01:06:11 17 circumferential sizes being, greater than said height of
01:06:15 18 bumps having said larger of said at least two
01:06:18 19 circumferential sizes.'"

01:06:21 20 And this is the crux of the matter, along
01:06:26 21 with the TAPPI specification issue, which we have
01:06:30 22 contended is indefinite. That would be the second
01:06:34 23 issue.

01:06:34 24 But with respect to the language that is
01:06:37 25 clearly -- puts the Trimaco product outside the scope of

01:06:44 1 the claim, this would be what I would draw your
01:06:46 2 attention to, Your Honor.

01:06:48 3 THE COURT: Okay. Let me ask a question of
01:06:54 4 you.

01:06:58 5 Let's look at Figure 1 that you pointed the
01:07:09 6 Court to. How do you align Figure 1, which shows these
01:07:32 7 half spherical bumps, with that part of the patent at
01:07:42 8 556-62, which describes a number of different
01:07:52 9 relationships between the bumps?

01:07:56 10 MS. POLLACK-MILGATE: Your Honor,
01:07:57 11 embodiments other than the one in which the taller
01:08:03 12 circumferentially larger bumps are shorter than the ones
01:08:14 13 that are circumferentially smaller, those were
01:08:17 14 disclaimed during prosecution. So those are
01:08:23 15 embodiments that the Terracinos very much tried to
01:08:26 16 obtain patent claims to. They were unable to do that
01:08:31 17 on the basis of Zegler. They were not able to have
01:08:35 18 those claims allowed because they were not patentable in
01:08:39 19 view of the prior art.

01:08:52 20 THE COURT: Okay.

01:08:53 21 MS. POLLACK-MILGATE: Your Honor, may I make
01:08:54 22 one other comment that goes back to something -- a
01:08:57 23 comment counsel made before, just for purposes of
01:09:02 24 clarification?

01:09:02 25 I do believe we have substantial agreement

01:09:04 1 on the fact that if only, for some reason, the Stay Put
01:09:14 2 Plus products were eliminated by virtue of the Court's
01:09:18 3 claim construction, I do believe that we would very
01:09:21 4 quickly reach some sort of resolution. So I would not
01:09:24 5 foresee that we would bother this Court for that much
01:09:28 6 longer if that were the result.

01:09:34 7 THE COURT: On the two-tier product?

01:09:37 8 MS. POLLACK-MILGATE: Correct. If the
01:09:39 9 two-tier product were to remain in the case, I believe
01:09:42 10 that counsel and their clients would probably reach a
01:09:45 11 quick resolution.

01:09:46 12 THE COURT: Let me ask you one more question
01:09:48 13 about the bumps before you sit down.

01:09:53 14 So we've got said downward projecting bumps
01:09:56 15 comprising bumps having at least two different
01:09:59 16 circumferential sizes.

01:10:04 17 And your view is that should be defined as
01:10:15 18 the downward projecting bumps having a measurable
01:10:20 19 boundary or perimeter of two or more sizes, right?

01:10:24 20 MS. POLLACK-MILGATE: Yes, Your Honor.

01:10:26 21 THE COURT: So the issue is whether the
01:10:27 22 bumps have to be measurable?

01:10:30 23 MS. POLLACK-MILGATE: Yes, Your Honor. I
01:10:32 24 think that that's a fair assessment of the difference of
01:10:37 25 the two opinions or of the two constructions, that

01:10:42 1 really the argument does focus on measurable or not.

01:10:46 2 THE COURT: All right. So having said
01:10:48 3 that, let's look at plaintiffs' construction.

01:10:55 4 Downward projecting bumps where each of the
01:10:58 5 bumps has one of two or more different circumferences.

01:11:04 6 So my question to you is: Is there such a
01:11:06 7 thing as a circumference that is not measurable?

01:11:11 8 MS. POLLACK-MILGATE: Well, that's why we
01:11:12 9 put "measurable" in, to confirm that it's measurable.

01:11:17 10 THE COURT: Isn't it always measurable?

01:11:20 11 MS. POLLACK-MILGATE: That's our position.
01:11:22 12 But that does seem to be a point of contention between
01:11:28 13 the parties. Counsel earlier stated something to the
01:11:33 14 effect that the bumps didn't need to be measured; you
01:11:40 15 could just eyeball them effectively and know which one
01:11:44 16 was larger or not.

01:11:45 17 But, yes, it is Trimaco's contention that
01:11:48 18 they do have to be measurable so that one of ordinary
01:11:54 19 skill in the art can determine whether or not something
01:11:55 20 falls within the scope of the claims.

01:11:57 21 THE COURT: What's an immeasurable example?

01:12:02 22 MS. POLLACK-MILGATE: A shape where you
01:12:04 23 can't -- and this goes to the construction of amorphous
01:12:06 24 as well. So if something were amorphous in the sense
01:12:09 25 of being undefined, and the bumps are flat enough to

01:12:15 1 sort of morph with the resilient grid below them, you
01:12:19 2 might not actually be able to tell where a bump begins
01:12:22 3 or a bump ends. They are just not discernible unless
01:12:28 4 you potentially are under a microscope. But even then
01:12:31 5 you have a grid that sort of flows in, if you will, to
01:12:35 6 the bump; and you may not be able to actually state
01:12:38 7 exactly what the bump is.

01:12:41 8 THE COURT: Well, would you agree to a
01:12:43 9 construction along the lines of, with regard to
01:12:46 10 amorphous, "Having an irregular shape but a measurable
01:12:54 11 boundary"?

01:12:55 12 MS. POLLACK-MILGATE: Yes, Your Honor.

01:12:57 13 THE COURT: Okay. Would plaintiff -- I
01:13:01 14 guess I should say you might want me to add, "a
01:13:07 15 measurable boundary or perimeter." Do you think
01:13:11 16 that --

01:13:11 17 MR. BYERS: Your Honor, I don't think that's
01:13:13 18 supported either by the claim or the specification,
01:13:16 19 because the specification makes it clear that it's the
01:13:18 20 height of the bumps above the grid that these are
01:13:22 21 constructed from. Right? So, number one, you know
01:13:28 22 where the bump starts and where the bump stops because
01:13:31 23 there's a grid in between them. And so where you have
01:13:36 24 a bump that runs into the grid and is attached to the
01:13:42 25 grid, that's where the bump starts.

01:13:46 1 So the other problem that I foresee with
01:13:48 2 that is that, again, adding "measurable" to it adds
01:13:55 3 limitation to it that is nowhere in the claims, nowhere
01:13:59 4 in the specification, and nowhere in the prosecution
01:14:04 5 history. So the Court would have to decide: Okay,
01:14:08 6 they're measurable. Well, what does measurable mean?

01:14:11 7 THE COURT: Okay. You want to stay away
01:14:13 8 from measuring?

01:14:15 9 MR. BYERS: I think the specification is
01:14:18 10 clear enough. A circumference of the bump above the
01:14:22 11 grid is described in the specification. And I don't
01:14:25 12 see any reason to go beyond that.

01:14:27 13 I will also point out -- and I'm not trying
01:14:31 14 to be -- I am not trying to be pithy, Your Honor, but an
01:14:38 15 amorphous solid and an amorphous shape is measurable.
01:14:41 16 I know I did it in calculus. So again, I think that --
01:14:48 17 again, I think it's an argument to try to narrow the
01:14:51 18 claims, and it severely complicates the issue.

01:14:56 19 I did want to go back to one item really
01:14:59 20 quickly, Your Honor, and make a correction. On the
01:15:05 21 question of "consisting of," I think I was misspeaking,
01:15:11 22 and perhaps opposing counsel was too. The *Conoco* case
01:15:16 23 from the Federal Circuit, which I think was the one that
01:15:19 24 I was actually referring to, that's 460 F.3d 1349,
01:15:28 25 speaking directly to claim construction, and in that --

01:15:38 1 the citation in that would be at 1360, so it would be
01:15:47 2 460 F.3d 1349 at 1360. The Federal Circuit goes into a
01:15:51 3 detailed discussion of the term "consisting of." And
01:15:54 4 the Federal Circuit makes it explicit that "Although
01:16:01 5 'consisting of' is a term of restriction, the
01:16:03 6 restriction is not absolute. The Patent Board of
01:16:06 7 Appeals has interpreted 'consisting of' to close the
01:16:09 8 claim to the inclusion of materials other than those
01:16:12 9 recited except for impurities ordinarily associated
01:16:16 10 therewith." And that was specifically the facts of
01:16:19 11 impurities in the case that the PTAB was interpreting.
01:16:23 12 But I apologize, Your Honor. That was the citation I
01:16:25 13 was going to.

01:16:26 14 THE COURT: As opposed to what? What was
01:16:31 15 the one that you did cite?

01:16:34 16 MR. BYERS: That was the *Norian* case, Your
01:16:36 17 Honor. And that was also discussing -- that was the
01:16:48 18 dental repair kit using the "consisting of" language
01:16:52 19 with the spoon. And that was 363 F.3d 1321. So it's
01:16:57 20 the *Norian* case and the *Conoco* case. My apologies.

01:17:06 21 THE COURT: No problem.

01:17:13 22 Let's see. What else do you want me to
01:17:19 23 know?

01:17:21 24 I want to know why you can't settle this
01:17:24 25 case.

01:17:27 1 MR. BYERS: Your Honor, I don't think
01:17:28 2 that -- and I apologize if I missed it. I don't think
01:17:35 3 that defendant has spoken to the issue of their
01:17:39 4 construction of the testing as being indefinite. And I
01:17:44 5 think that absolutely needs to be addressed. Because,
01:17:47 6 again, I'm not quite sure what they mean by "indefinite"
01:17:52 7 in that context.

01:17:53 8 THE COURT: What do you mean by
01:17:54 9 "indefinite"? That's a good point.

01:17:56 10 MS. POLLACK-MILGATE: I am happy to talk
01:17:59 11 about what Trimaco means by "indefinite" when we talk
01:18:01 12 about TAPPI.

01:18:05 13 So it starts, first of all, with the fact
01:18:13 14 that the test method -- and counsel did understand this
01:18:17 15 part of it, which is that the test method itself is
01:18:23 16 talking about friction as between two pieces of paper.
01:18:28 17 So if you look at the TAPPI specification without any
01:18:34 18 further knowledge, it's not clear how to apply it to a
01:18:38 19 different material. So that is the first problem that
01:18:42 20 renders it indefinite.

01:18:45 21 THE COURT: Just because we're not talking
01:18:46 22 about paper?

01:18:47 23 MS. POLLACK-MILGATE: Yes. Because the
01:18:48 24 test method goes into great detail about cutting the
01:18:52 25 material, placing it on the inclined plane, and the rest

01:19:02 1 of it. So it actually has a very detailed
01:19:05 2 specification that's associated with that.

01:19:06 3 THE COURT: Well, a drop cloth can be cut
01:19:09 4 too. Why can't you just cut a piece of the cloth and
01:19:15 5 go to it under that specification?

01:19:19 6 MS. POLLACK-MILGATE: Well, there's a little
01:19:21 7 bit more to it than that. It's not just about cutting
01:19:25 8 it. There were some other parameters there. But
01:19:28 9 there are some other issues as well.

01:19:31 10 And I'm talking about -- at the moment right
01:19:33 11 now I'm focused on Claim 1, which has that TAPPI
01:19:38 12 limitation, because we have a couple of different ones
01:19:40 13 or different iterations of this issue.

01:19:43 14 The other thing that we do not know from the
01:19:46 15 claim is what the support surface is. So in the TAPPI
01:19:51 16 specification the support surface is paper. So one of
01:19:56 17 ordinary skill in the art doesn't immediately know:
01:19:59 18 What surface am I testing against? That's the second
01:20:02 19 problem.

01:20:02 20 The third problem is we don't know the
01:20:04 21 process for using the inclined plane. And we don't
01:20:09 22 know whether there's a sled or not. So there's a
01:20:12 23 discrepancy between the TAPPI specification and also the
01:20:15 24 plaintiffs' patent. This is shown on slide 38.

01:20:23 25 So on slide 38 on the left-hand side there

01:20:27 1 is a picture from the TAPPI specification which shows
01:20:32 2 that there is a sled with a specimen, so the specimen
01:20:37 3 goes underneath. And then there's a 200-gram sled
01:20:41 4 that's placed on top.

01:20:44 5 Figure 4 from the Terracinos's patent does
01:20:48 6 not show a sled at all.

01:20:51 7 So it's not clear whether the test method
01:20:55 8 for TAPPI that's supposed to be followed is going to use
01:20:59 9 a sled or not. And, in fact, it's not mentioned
01:21:02 10 anywhere in the specification.

01:21:05 11 And we don't know the rate. We don't have
01:21:07 12 any details for the rate of -- at what rate the
01:21:12 13 apparatus is going to be inclined. So we don't know
01:21:18 14 that as well.

01:21:20 15 And all of this is an issue again. And it
01:21:24 16 really does -- it does, or at least to some degree this
01:21:27 17 comes of the issue of having a test method that applies
01:21:32 18 to paper and doesn't apply -- applies to the materials.

01:21:36 19 But there's another issue as well, and the
01:21:38 20 other issue too is that there's an inconsistency in the
01:21:43 21 patent. So the claim talks about a sliding coefficient
01:21:49 22 of friction. However, TAPPI measures a static
01:21:54 23 coefficient of friction.

01:21:55 24 And not only that. Those are two different
01:21:59 25 measurements. And you can see this actually on slide

01:22:02 1 40. There are some excerpts that are directly from the
01:22:06 2 TAPPI specification. The method describes the scope,
01:22:11 3 so from TAPPI directly. This method describes a
01:22:14 4 procedure for the determination of the coefficient of
01:22:18 5 static friction of paper. So that's what the test
01:22:24 6 method is described as measuring.

01:22:25 7 But then if you look at the definitions
01:22:27 8 below, you will see there is a different definition for
01:22:31 9 what the static friction is, how to determine that
01:22:35 10 versus how to determine the sliding friction.

01:22:41 11 And Claim 1 uses the term "sliding
01:22:45 12 coefficient of friction." And, Your Honor,
01:22:47 13 unfortunately, or maybe fortunately, it is not this
01:22:51 14 Court's job to rewrite claim language to make sense.

01:22:56 15 So there's no way to determine, based on
01:22:59 16 reading the TAPPI specification, how to mimic the
01:23:03 17 results so as to figure out whether one of ordinary
01:23:08 18 skill in the art fits within the claim or not, and the
01:23:10 19 specification is also not enlightening on this point,
01:23:13 20 nor are we to read the specification into the claim.
01:23:17 21 We're just to read it in light. We're to read the
01:23:20 22 claims in light of the specification.

01:23:23 23 THE COURT: Well, does the case the Federal
01:23:29 24 Circuit decided in 2017, *Presidio Components v. American*
01:23:35 25 *Technical Ceramics Corporation*, 875 F.3d 1369, is that

01:23:41 1 case instructive, at least as to whether you can say
01:23:46 2 indefinite, given the holding when there are disputes
01:23:50 3 between the parties as to the proper application of the
01:23:53 4 test methodology in the circumstances of an individual
01:23:57 5 case, those disputes are about whether there is
01:24:02 6 infringement. Those disputes are not about whether the
01:24:06 7 patent claims are indefinite.

01:24:11 8 So is that really what we're talking about,
01:24:13 9 not indefinite?

01:24:15 10 MS. POLLACK-MILGATE: We are talking about
01:24:16 11 indefiniteness. And indefiniteness, the Federal
01:24:20 12 Circuit has said, is an issue; it is an issue for claim
01:24:23 13 construction. In fact, when you don't raise your
01:24:25 14 indefiniteness issues as part of the claim construction
01:24:29 15 process as a defendant, sometimes you will be held to
01:24:32 16 have waived those arguments.

01:24:34 17 THE COURT: Correct me if I'm wrong, but
01:24:37 18 haven't I just referred to a case where the Federal
01:24:40 19 Circuit said: This kind of a dispute, this is a dispute,
01:24:45 20 as I understand it, about the proper application of the
01:24:48 21 test methodology in the circumstances of an individual
01:24:53 22 case. And the Federal Circuit has said those disputes
01:24:57 23 are about whether there is infringement, not about
01:25:00 24 whether the patent claims are indefinite.

01:25:03 25 Am I misreading that case? Do you want to

01:25:10 1 look at it?

01:25:11 2 MS. POLLACK-MILGATE: I would love to look
01:25:13 3 at the case. My short answer, based on the language
01:25:15 4 that Your Honor has read which talks about the
01:25:16 5 application of the test methodology, I don't see that
01:25:19 6 there is here is a dispute over the application of the
01:25:22 7 test methodology and whether the application would be
01:25:29 8 met or would not be met. The problem here is one of
01:25:35 9 ordinary skill in the art can't determine what
01:25:37 10 methodology to follow. And that then renders the
01:25:41 11 claims indefinite because one of ordinary skill in the
01:25:43 12 art is unable to determine -- and this is the language
01:25:46 13 from *Nautilus* -- with reasonable certainty what the
01:25:52 14 claim terms mean, in this case the TAPPI specification.

01:25:56 15 So hard to know whether you're going to meet
01:25:58 16 that claim limitation or not if you don't have a test
01:26:01 17 specification that's specific enough, or that -- or
01:26:04 18 you've pulled a test methodology doesn't ordinarily
01:26:08 19 apply to figure out whether the scope of the claim is
01:26:11 20 met or not.

01:26:12 21 We have cited in our brief -- and this is
01:26:15 22 specifically in our sur-reply -- or our reply, pardon --
01:26:20 23 cases in which the Courts have held that indefiniteness
01:26:25 24 is an issue for claim construction and it's also an
01:26:29 25 issue that Your Honor can resolve without expert

01:26:31 1 testimony.

01:26:33 2 The last point I would like to raise is that
01:26:38 3 curiously plaintiffs really haven't responded to this at
01:26:41 4 all. They haven't made any argument about what that
01:26:45 5 test method is, what the patent teaches. In the
01:26:50 6 opening claim construction brief plaintiff said: It's
01:26:55 7 clear, read the test specification.

01:26:59 8 So, strangely, we haven't received a
01:27:03 9 response to the points that we have raised with respect
01:27:05 10 to what one of ordinary skill in the art would not
01:27:10 11 understand.

01:27:10 12 THE COURT: For example, how do you deal
01:27:12 13 with the fact that the test measures a static
01:27:15 14 coefficient of friction?

01:27:17 15 MS. POLLACK-MILGATE: Yes, Your Honor.

01:27:21 16 THE COURT: So what's your answer to all
01:27:22 17 that.

01:27:22 18 MR. BYERS: Well, first off, I think the
01:27:25 19 Court is absolutely correct, and I think, if I didn't
01:27:31 20 say it specifically, I think I alluded to it in my
01:27:34 21 opening that this is not a question for claim
01:27:38 22 construction. We made the test. We cite the test.
01:27:40 23 The test is publicly available. And so it's not a
01:27:45 24 proper question for the Court to sit and say that was
01:27:48 25 the right test or the wrong test, or it was done

01:27:50 1 incorrectly, Number 1.

01:27:53 2 Number 2, I would -- one of the reasons why
01:27:58 3 I was -- why I really wasn't sure what to make of this
01:28:01 4 is that if there's anybody that's a person of ordinary
01:28:07 5 skill in the art, it's Trimaco. Trimaco has been
01:28:09 6 manufacturing and making these for a long time. They
01:28:14 7 licensed the ability to make the drop cloths on the
01:28:19 8 basis of my client's patent, including the recitation of
01:28:24 9 the testing and the coefficients and the like, even
01:28:28 10 though, to be clear, Trimaco said that they were giving
01:28:31 11 the licensing agreement out of the goodness of their
01:28:35 12 heart, that they didn't think that their product
01:28:37 13 infringed.

01:28:40 14 And finally, I'm going to bring the Court to
01:28:43 15 the -- it's been mentioned before; Trimaco has a patent
01:28:46 16 that was issued for the production and testing of these
01:28:50 17 products by a method.

01:28:51 18 And if I may approach, Your Honor.

01:28:57 19 THE COURT: Yes.

01:28:59 20 MR. BYERS: I'll also point out that --

01:29:04 21 THE COURT: Are you offering this as
01:29:07 22 Plaintiff's Exhibit 1?

01:29:09 23 MR. BYERS: I would, Your Honor.

03:58:21 24 (Whereupon Plaintiff's Exhibit 1 is admitted
03:58:24 25 into evidence.)

01:29:11 1 MR. BYERS: And as the Court is aware, it is
01:29:13 2 allowed to consider extrinsic evidence under certain
01:29:20 3 circumstances in claim construction. And I think this
01:29:22 4 speaks directly to their argument that, number one,
01:29:24 5 TAPPI doesn't apply and therefore makes the claim
01:29:26 6 indefinite. And, number two, what a person of ordinary
01:29:32 7 skill in the art would understand.

01:29:33 8 The reason I say that is because this is a
01:29:36 9 patent that was issued on a prosecution that was handled
01:29:40 10 by opposing counsel's firm on behalf of the defendants.
01:29:45 11 And at the tab that's marked in Column 6, beginning at
01:29:49 12 line 12 -- and again, this is the patent that they got
01:29:54 13 for the manufacture of these non-skid surfaces where
01:29:58 14 they incorporate by reference "the TAPPI T548 standard
01:30:06 15 test procedures are incorporated herein." So as a
01:30:08 16 minimum, as a minimum, as a Person of Ordinary Skill in
01:30:12 17 the Art, they know that it can be applied to things
01:30:15 18 other than paper.

01:30:16 19 THE COURT: Well, that is kind of
01:30:17 20 interesting. What do you think?

01:30:19 21 MS. POLLACK-MILGATE: Your Honor, I haven't
01:30:21 22 had a chance to consider this at all because we were
01:30:24 23 bound under this Court's claim construction process to
01:30:27 24 identify extrinsic evidence, which we did on November
01:30:32 25 7th, 2023. And this was not identified. So counsel

01:30:37 1 is not prepared to respond today without understanding
01:30:40 2 exactly what this says and what the scope of it is.

01:30:43 3 THE COURT: It's your patent though, right?

01:30:44 4 MS. POLLACK-MILGATE: Yes, Your Honor. But
01:30:45 5 our patent -- and I would concede -- I will concede that
01:30:51 6 that potentially would be something for the Court to
01:30:54 7 consider on claim construction. However, it was
01:30:56 8 supposed to be raised at the proper time.

01:30:58 9 Trimaco's patent does not have anything to
01:31:00 10 do with this dispute.

01:31:02 11 Yes, you can look to other documents to see
01:31:04 12 what one of ordinary skill in the art would consider.

01:31:07 13 This has not been briefed ever. So I just
01:31:10 14 frankly don't understand why, if counsel wanted to bring
01:31:14 15 this to our attention, this is the mode and the time of
01:31:17 16 doing so.

01:31:18 17 THE COURT: Okay. So did you miss a date
01:31:22 18 for disclosure of this?

01:31:24 19 MR. BYERS: I don't think so, Your Honor.
01:31:26 20 It's simply -- it's simply an exhibit that was in their
01:31:30 21 possession. And I did not -- to be clear, and I made
01:31:33 22 this very clear at the beginning, I did not know where
01:31:36 23 they were going with their argument that it was
01:31:38 24 indefinite. As I said, my interpretation of what they
01:31:42 25 were saying was that it likely fell in the structure of

01:31:48 1 failed to -- failure to serve its essential purpose.
01:31:57 2 But again, I mean, it's their patent. And it was
01:32:01 3 prosecuted on behalf of the defendant by their law firm.
01:32:04 4 And so to say that we don't know what TAPPI means, I
01:32:08 5 don't need to tell them what their license plate number
01:32:11 6 is, Your Honor; they know what that is.

01:32:13 7 THE COURT: Okay.

01:32:17 8 MS. POLLACK-MILGATE: I'll sit down.

01:32:22 9 THE COURT: If you feel that it's necessary
01:32:24 10 to have an opportunity to digest this after the hearing
01:32:29 11 and perhaps submit a short little addendum to a brief,
01:32:33 12 I'll give you that opportunity.

01:32:36 13 MS. POLLACK-MILGATE: Thank you, Your Honor.
01:32:37 14 I would appreciate that.

01:32:41 15 THE COURT: All right.

01:33:11 16 So what's the schedule that I've carved out
01:33:15 17 going forward here? Does anybody have command of the
01:33:18 18 docket?

01:33:21 19 MR. BYERS: Your Honor, I'm sorry, I'm
01:33:23 20 shooting from the hip, but I did review the Court's
01:33:26 21 order. And my colleague can correct me if I miss some
01:33:33 22 of the points, but it was my understanding that the
01:33:35 23 Court was going to withhold any further scheduling until
01:33:38 24 the Court made a decision on the claim construction.

01:33:41 25 I do have a couple of really quick

01:33:43 1 additional points that I'd like to make before we shut
01:33:46 2 this down.

01:33:47 3 THE COURT: Go ahead.

01:33:51 4 MR. BYERS: The first one was *Conoco*, which
01:33:54 5 I believe I've covered.

01:33:56 6 And the last point -- two, really quickly,
01:34:01 7 and I think these are two issues that the defendants
01:34:04 8 have focused on very hard.

01:34:06 9 Of course, the issue of the "consisting of"
01:34:08 10 language and how it applies to the layers here. As I
01:34:11 11 pointed out to the Court, the dispute that the examiner
01:34:14 12 and all of the amendments were made in light of the
01:34:18 13 examiner interpreting the top layer as having multiple
01:34:23 14 layers.

01:34:24 15 And in plaintiffs' corrected opening claim
01:34:28 16 construction brief at page 6, that's pointed out very
01:34:33 17 quickly -- very clearly and with pincite, pinpoint cites
01:34:40 18 to the prosecution history where the examiner, yes,
01:34:44 19 said: Applicant has amended the preamble language of
01:34:48 20 the claim by closing up the recitation and making it a
01:34:50 21 two-layered structure.

01:34:52 22 The examiner then rejected the application
01:34:54 23 in light of U.S. Patent 6,946,183 the *Malpass, et al.*,
01:35:01 24 and stated that the layers in the '183 patent may be
01:35:04 25 made of different materials and can comprise

01:35:07 1 intermediate layers.

01:35:10 2 And the examiner is equating the
01:35:14 3 intermediate layer to be equivalent, either the
01:35:15 4 impervious layer, or it could act as the attachment
01:35:19 5 layer between the upper fabric and the lower resilient
01:35:22 6 rubber layer.

01:35:24 7 So again, there's nothing in the prosecution
01:35:26 8 history and there's nothing in the patent itself that
01:35:29 9 shows that my client gave up having multiple layers in
01:35:34 10 the product as a whole. This was all focused on the
01:35:39 11 upper layer and whether or not the upper layer had
01:35:42 12 multiple layers.

01:35:45 13 I will leave that at that. I think the
01:35:49 14 Court has heard all we want to say on that.

01:35:50 15 And the last thing is with regard to the
01:35:52 16 bump issue and the Zegler issue. The defendants are
01:35:55 17 trying to have the Court interpret the claims with
01:35:58 18 regards to those bumps as saying that all smaller bumps
01:36:04 19 must have a height bigger than all bigger bumps. But
01:36:08 20 not only is that unsupported, but it also makes no sense
01:36:13 21 whatsoever in terms of the prosecution history, the
01:36:17 22 claim as written, the figures, and the description of
01:36:21 23 how these bumps occur in the grid. It would require a
01:36:26 24 grid that has only two sized bumps, because the minute
01:36:33 25 you throw another bump in there with a different

01:36:36 1 circumference, what height does it have? The only way
01:36:40 2 to determine that is by comparing two bumps. And the
01:36:43 3 specification is clear, and the claim doesn't say
01:36:45 4 "only" --

01:36:47 5 THE COURT: What's the defendant's response
01:36:49 6 to that particular argument?

01:36:52 7 MS. POLLACK-MILGATE: I'm trying to make
01:36:58 8 sure I understand the argument. Is the argument that if
01:37:04 9 there are three different sizes of bumps? Is that the
01:37:08 10 argument we're going for?

01:37:09 11 THE COURT: Well, more than two sizes, as I
01:37:12 12 understand it. Right? Because you're saying
01:37:16 13 defendant's construction depends on there just being
01:37:18 14 just two different sizes?

01:37:19 15 MR. BYERS: That's correct, Your Honor.

01:37:20 16 THE COURT: And the little one is taller and
01:37:23 17 the fat one is shorter?

01:37:24 18 MR. BYERS: That's correct, Your Honor.
01:37:25 19 That's what the defendant is trying to get the Court
01:37:27 20 essentially to say, when that's not what the
01:37:30 21 specification says, and that's not what the claim says.
01:37:33 22 The claim is not that narrow.

01:37:36 23 MS. POLLACK-MILGATE: So first of all, I
01:37:37 24 want to go back to the specification point, because
01:37:40 25 again, there are several embodiments in the Terracinos's

01:37:47 1 patent. They disclaimed all except the embodiments in
01:37:51 2 which the smaller bumps -- sorry, the smaller,
01:37:56 3 circumferentially smaller bumps would have a height
01:38:02 4 larger than the circumferentially larger bumps. They
01:38:07 5 disclaimed everything else.

01:38:09 6 I would agree with counsel, frankly, that
01:38:14 7 there is an issue in terms of what if you have multiple
01:38:19 8 bumps, and how are you going to measure those? That, in
01:38:24 9 our view, again, is an indefiniteness problem because
01:38:29 10 you aren't actually sure how to measure something in one
01:38:35 11 proportion or not.

01:38:36 12 However, it's clear from the prosecution
01:38:40 13 history that what was intended by that claim language
01:38:43 14 was that third embodiment that is set forth in the
01:38:47 15 specification, that's not what's in the prior art, and
01:38:52 16 that is exactly what the examiner granted.

01:38:58 17 If there's any other construction, if it can
01:39:00 18 be construed then to just require that you can pick one
01:39:03 19 random bump, and you've got one bump that is smaller
01:39:07 20 circumferentially and taller than another one, it's
01:39:12 21 about meaningless in the context of a resilient grid.

01:39:18 22 THE COURT: Okay.

01:39:22 23 MR. BYERS: Your Honor, that's how the claim
01:39:24 24 in the specification reads.

01:39:25 25 THE COURT: I have a lot of work to do here.

01:39:28 1 This has been helpful.

01:39:30 2 And I'll give you, say, five days if there's
01:39:35 3 something you want to add into the arguments based on
01:39:38 4 the Court's acceptance as Plaintiff's Exhibit 1 United
01:39:43 5 States Patent Number 10,683,607B2 dated June 16, 2020,
01:39:57 6 where on some part of it there is a reference made to
01:40:03 7 the TAPPI T548 standard test procedures, you can. All
01:40:15 8 right.

01:40:15 9 MR. BYERS: Your Honor, if they choose to do
01:40:17 10 so --

01:40:18 11 THE COURT: You want a chance to have the
01:40:20 12 last word?

01:40:22 13 MR. BYERS: If Your Honor would allow me to.
01:40:24 14 I'm not saying I will.

01:40:25 15 THE COURT: You've got five days to chew on
01:40:27 16 it and write me back.

01:40:29 17 MR. BYERS: Thank you, Your Honor.

01:40:34 18 THE COURT: So everything has kind of ground
01:40:37 19 to a halt, hasn't it, until the Court decides these
01:40:42 20 issues. So I'm sure you've got lots of other things
01:40:45 21 you want to be working on. And I've got about 700 or
01:40:52 22 so cases, give or take. But I'm focused on this, and I
01:40:58 23 want to respond as soon as I can.

01:41:00 24 And if the Court's order suggests to you it
01:41:05 25 would be beneficial to carve some time out to try to

01:41:09 1 come to terms with a resolution that you can put your
01:41:12 2 hands on that each side can live with, and you would
01:41:15 3 like to suggest to the Court an opportunity to do that,
01:41:20 4 either through a magistrate judge or a third-party
01:41:23 5 mediator, let me know.

01:41:27 6 But I think in December you gave me a bit of
01:41:30 7 a report about settlement. Can you remind me what you
01:41:34 8 said in that?

01:41:35 9 MS. POLLACK-MILGATE: I don't know exactly
01:41:38 10 what was said, but I can certainly tell you what the
01:41:41 11 status is. So there were discussions early on after
01:41:44 12 this case was filed. Those were not successful. We
01:41:47 13 have subsequently been in touch with the mediator that
01:41:51 14 Your Honor appointed.

01:41:52 15 THE COURT: Who are you using? It was
01:41:56 16 probably someone you proposed to me.

01:41:58 17 MR. BYERS: To be clear, Your Honor, we had
01:42:01 18 discussed it, and given defendant's position that they
01:42:07 19 didn't think it would be fruitful until we got a claim
01:42:11 20 construction ruling from the Court --

01:42:12 21 THE COURT: That's probably what you wrote
01:42:13 22 in December.

01:42:14 23 MR. BYERS: That's basically the essentials
01:42:16 24 of it, Your Honor. My client's always willing to
01:42:19 25 discuss it, but under the circumstances, not going to

01:42:23 1 waste anybody's time and money.

01:42:24 2 THE COURT: Right. Okay. Have you had
01:42:26 3 one -- you've had one crack in front of this mediator?

01:42:30 4 MS. POLLACK-MILGATE: No, Your Honor,
01:42:31 5 because of what counsel just explained. Early on we
01:42:37 6 spoke potentially, but that was right after the case was
01:42:39 7 filed.

01:42:40 8 I do think we could say that certainly this
01:42:43 9 mediator seems like he'll be good at his job. And so I
01:42:47 10 do think if we get somewhere close to where we're ready
01:42:50 11 that that would be well received.

01:42:52 12 THE COURT: Well, I'll probably, in the
01:42:56 13 conclusion of the order to come, will give you some
01:43:00 14 direction on making proposals to the Court about the
01:43:04 15 next stage of the case. And I won't forget, but if I
01:43:11 16 do, to put in there a sentence about including
01:43:15 17 mediation, just feel free to focus primarily on that if
01:43:21 18 you think this is the point to do that, and ask the
01:43:23 19 Court to push off any other dates unless some, for
01:43:28 20 example, really limited discovery you think might be
01:43:32 21 necessary to undertake before mediation. You know, just
01:43:37 22 think it through.

01:43:38 23 You all know this case so much better than I
01:43:41 24 could ever know it. You know your clients; I'll never
01:43:46 25 know them. But I'll make decisions, and I'll work very

01:43:51 1 hard to do that and take into consideration all of what
01:43:55 2 you've given me and the law. But I'm very respectful
01:44:00 3 of that process that could unfold here and save your
01:44:04 4 clients a lot of money. Because I know how expensive
01:44:08 5 these cases are. And there's a lot in this case that's
01:44:11 6 going to keep on rolling before trial. It's going to
01:44:16 7 cost a lot of money. So I feel it would be remiss if I
01:44:22 8 didn't reflect on Rule 1, which counsels all of us to
01:44:28 9 look for the just, speedy, and inexpensive determination
01:44:31 10 of every action. And I always use a time like this
01:44:35 11 when everybody is together to say I'll help you
01:44:38 12 facilitate it. I'll do my job; I'll decide the issues
01:44:42 13 presented. But if I can be of help, let me know.

01:44:47 14 And towards that end, if you get to that
01:44:50 15 point where you think you need to talk to me, and I
01:44:52 16 don't think it -- it's not going to happen until this
01:44:56 17 case gets further down the road, but if there's an issue
01:44:59 18 that comes up, be it in discovery or maybe in
01:45:05 19 structuring something, and you think a telephone
01:45:09 20 conversation with the Court to get some informal
01:45:12 21 direction or formal direction, I make myself available,
01:45:17 22 because I think that's a good use of my time. It's
01:45:19 23 just best if you give Sandra two or three alternative
01:45:23 24 dates of availability for a telephone call, and you're
01:45:26 25 more likely to get one of those times.

01:45:29 1 So is there anything else before we close up
01:45:33 2 for the day that plaintiff wants to bring to my
01:45:37 3 attention?

01:45:38 4 MR. BYERS: I have nothing further, Your
01:45:39 5 Honor. Thank you.

01:45:40 6 THE COURT: Give me the little triangle as
01:45:45 7 Plaintiff's Exhibit 2, the little cutout piece.

01:45:49 8 MR. BYERS: Yes, Your Honor.

03:58:21 9 (Whereupon Plaintiff's Exhibit 2 is admitted
03:58:24 10 into evidence.)

01:45:51 11 THE COURT: I just want to perhaps reflect
01:45:53 12 on that. And I'll just get the clerk to put a sticker
01:45:57 13 on it. We'll mark that Plaintiff's Exhibit 2.

01:46:03 14 MR. BYERS: Keep that as a memento.

01:46:07 15 MR. BOYLE: Don't bribe the Judge in court.

01:46:11 16 THE COURT: My law clerks have a tradition
01:46:13 17 which I've inflicted on them that every Christmas they
01:46:17 18 make an ornament of the year's most memorable case in
01:46:21 19 which they were involved. So if I see hanging on the
01:46:24 20 tree this Christmas as Liz has left me this little
01:46:28 21 triangle -- except Sandra rightfully so would not allow
01:46:32 22 that because it's now come into the clerk's custody and
01:46:35 23 control.

01:46:36 24 Anything from the defendant?

01:46:38 25 MS. POLLACK-MILGATE: Your Honor, we do have

01:46:39 1 an outstanding motion to compel, but I'm assuming that's
01:46:43 2 not within your jurisdiction.

01:46:44 3 THE COURT: I know you do. You're getting
01:46:46 4 in front of Judge Jones down in Wilmington on that.
01:46:52 5 You want all documents constituting or concerning any
01:46:57 6 opinion or draft opinions, assessments, or evaluations
01:47:01 7 made by plaintiff or on plaintiffs' behalf, whether
01:47:06 8 written or oral, relating to the scope, claim -- and it
01:47:09 9 goes on and on.

01:47:13 10 What is it you're really looking for?

01:47:15 11 MS. POLLACK-MILGATE: Your Honor, what we're
01:47:16 12 looking for specifically is that in the complaint in
01:47:19 13 this matter the Terracinos attached an opinion of
01:47:22 14 counsel related to infringement and thereby waiving
01:47:25 15 privilege. And so what we are seeking are documents
01:47:28 16 that are related to that opinion. And even more
01:47:31 17 specifically, the issue of "comprising" and "consisting
01:47:36 18 of" was not discussed in that opinion. And we're
01:47:38 19 entitled to know why that is now that this opinion of
01:47:43 20 counsel has been disclosed and was obviously relied on
01:47:49 21 to establish infringement.

01:47:51 22 THE COURT: Well, because it was extrinsic
01:47:56 23 evidence that you were seeking, I really didn't think it
01:47:59 24 was necessary that that be decided for me to do my job.
01:48:03 25 Would you agree on that?

01:48:04 1 MS. POLLACK-MILGATE: Well, obviously
01:48:04 2 depending on where Your Honor -- so the first point
01:48:05 3 would be it is certainly Trimaco's position that
01:48:10 4 "consisting of" is a very well-established proposition
01:48:12 5 of law. However, if Your Honor were inclined to go the
01:48:16 6 other direction, we certainly would want the opportunity
01:48:18 7 to provide evidence to this Court that the Terracinos
01:48:22 8 knew it too, and yet brought this case anyway.

01:48:26 9 THE COURT: I don't see how that factors
01:48:28 10 into claim construction, though. Do you?

01:48:31 11 MS. POLLACK-MILGATE: It would factor in in
01:48:34 12 terms of the ordinary legal understanding of the term
01:48:39 13 and that it was their understanding as well. So I
01:48:42 14 think in terms of the positions that they're putting
01:48:44 15 forward to the Court, it would very much undermine their
01:48:48 16 position on claim construction.

01:48:51 17 THE COURT: What do you think?

01:48:53 18 MR. BYERS: Your Honor, number one, it's
01:48:56 19 extrinsic evidence.

01:48:57 20 Number two, any communications that I have
01:49:01 21 that are -- are potentially discoverable with a
01:49:04 22 testifying expert who's been disclosed as a testifying
01:49:07 23 expert.

01:49:08 24 And number three, all the parties agreed
01:49:10 25 going into this that there would be no expert testimony

01:49:12 1 and it was not necessary for claim construction.

01:49:15 2 And so there is absolutely nothing out there
01:49:18 3 that was properly discoverable or disclosable, number
01:49:23 4 one.

01:49:24 5 And number two, there is nothing. And I
01:49:27 6 made that clear. And I went through it carefully. And
01:49:30 7 to be clear, my testifying expert, Mr. Tanner, is a
01:49:36 8 practicing patent attorney and litigation counsel, and
01:49:42 9 he and I went carefully through everything. I went
01:49:45 10 through it independently. He went through it
01:49:47 11 independently. There is nothing responsive. And I
01:49:50 12 made that absolutely clear to defendants.

01:49:52 13 THE COURT: Well, I'm doing what I'm doing.
01:49:54 14 I don't think I need to stop for the magistrate judge,
01:49:59 15 given the issue that has been referred to him, the
01:50:02 16 nature of it. But if either side is dissatisfied with
01:50:07 17 the ruling that he makes tomorrow or in the future, you
01:50:13 18 can bring it to my attention.

01:50:18 19 And if you think something that he did needs
01:50:20 20 to be brought to my attention, I'm sure you will.

01:50:23 21 Can I leave it at that?

01:50:25 22 MS. POLLACK-MILGATE: Yes, you may leave it
01:50:27 23 there. I will not respond.

01:50:28 24 MR. BYERS: Thank you, Your Honor.

01:50:28 25 THE COURT: I just want to say I just got

01:50:31 1 back from Williamsburg. What do you think of the Fat
01:50:33 2 Canary? Isn't that a great restaurant? I didn't get
01:50:38 3 in.

01:50:39 4 MR. BYERS: It is. I will say this: We
01:50:41 5 live on Jamestown Road in the very last neighborhood
01:50:46 6 before you get to Jamestown proper and the ferry.

01:50:50 7 THE COURT: You're way out there.

01:50:52 8 MR. BYERS: It's called The Point.

01:50:53 9 THE COURT: It's probably something that has
01:50:55 10 been created long after I left.

01:50:58 11 MR. BYERS: Our house was built in 2002.

01:51:03 12 THE COURT: I thought you were going to say
01:51:06 13 18-something. That was going to totally undermine.

01:51:09 14 MR. BYERS: I've done the antique house
01:51:11 15 thing. I don't do antique houses anymore.

01:51:14 16 But I will say this, that if you like beer,
01:51:19 17 the brewery down there --

01:51:21 18 THE COURT: Is there a brewery?

01:51:22 19 MR. BYERS: There is. It's Billsburg
01:51:24 20 Brewery. It's right there at the turnoff to Jamestown
01:51:28 21 proper. They have great beer.

01:51:30 22 THE COURT: You need to be writing this
01:51:32 23 down. It's a nice place to visit.

01:51:34 24 MR. BYERS: There's a food truck called the
01:51:37 25 Hungry Pug.

01:51:39 1 THE COURT: You're getting a little too
01:51:41 2 specific for me. When I go to see my mother, I'm not
01:51:45 3 going to be looking for a food truck. But I might take
01:51:48 4 her to the brewery.

01:51:49 5 MR. BYERS: If you're looking for pizza,
01:51:50 6 Jamestown Pie Company.

01:51:53 7 THE COURT: My husband gets stuck about
01:51:56 8 halfway down at the Spanish market on the right, La
01:51:59 9 Tienda. That's about as far as we get.

01:52:02 10 MR. BYERS: There's a reason why the
01:52:04 11 Virginia State Bar holds the annual winter meeting there
01:52:07 12 every January.

01:52:10 13 THE COURT: Interesting.

01:52:12 14 Well, again, where are you all from?

01:52:16 15 MS. POLLACK-MILGATE: Indianapolis, Indiana.

01:52:19 16 THE COURT: You've got a plane to catch,
01:52:21 17 don't you?

01:52:21 18 MS. POLLACK-MILGATE: I'm meeting an old
01:52:25 19 friend, so not until tomorrow.

01:52:27 20 THE COURT: How about you?

01:52:27 21 MR. MOYE: I'm based in Atlanta. Practiced
01:52:29 22 in Raleigh about 12 years now.

01:52:31 23 THE COURT: How are you getting back to
01:52:32 24 Atlanta?

01:52:33 25 MR. MOYE: I'm going to be in Raleigh

01:52:35 1 tonight.

01:52:36 2 THE COURT: Mr. Boyle, you need to be
01:52:38 3 telling them where to eat in Raleigh. What are your
01:52:41 4 suggestions?

01:52:42 5 MR. BOYLE: We have a few Wendy's. I'm
01:52:46 6 partial to McDonald's.

01:52:49 7 THE COURT: You need to be better than that.
01:52:51 8 Can't you come up with something better than that?

01:52:54 9 MS. POLLACK-MILGATE: How about this, where
01:52:56 10 to eat here?

01:53:02 11 MR. BYERS: This looks like a very cool
01:53:04 12 downtown.

01:53:05 13 THE COURT: It is a cool downtown.

01:53:07 14 MR. BOYLE: I'd say stay here.

01:53:10 15 THE COURT: I'll tell you where I think the
01:53:13 16 food is the best right now, and I don't know if it's
01:53:15 17 open, is a place called Cork on the street that's Broad,
01:53:20 18 and go down about one block on the left.

01:53:37 19 This is a restaurant owner in front of me.
01:53:39 20 I should be asking you where to eat. She's good for
01:53:43 21 breakfast, right?

01:53:46 22 THE CLERK: Yes, ma'am.

01:53:47 23 THE COURT: She'll probably get in trouble
01:53:50 24 if I start marketing her.

01:53:53 25 This is probably when the judge needs to

01:53:58 1 leave the bench.

01:53:58 2 My law clerk, I'm sure, knows everything.

01:54:07 3 All right. Well, hard issues. I

01:54:10 4 definitely want to think deeply. I've learned a lot

01:54:14 5 today. I just want to thank you, and safe travels

01:54:17 6 back.

7 (Concluded at 12:09 p.m.)

8 - - -

9

10 **C E R T I F I C A T E**

11

12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled
14 matter.

15

16 /s/ Tracy L. McGurk_____

____2/22/2024____

17 Tracy L. McGurk, RMR, CRR

Date

18

19

20

21

22

23

24

25

	3	A	
<p>'183 [1] - 64:24 'consisting [3] - 36:24, 52:5, 52:7 'downward [1] - 46:14</p>	<p>3 [1] - 23:4 30326 [1] - 1:24 31 [2] - 45:22, 45:25 317 [1] - 1:21 317-2779 [1] - 1:15 32 [1] - 45:9 33 [2] - 46:8, 46:10 33009 [1] - 1:17 3340 [1] - 1:23 363 [2] - 27:23, 52:19 38 [2] - 54:24, 54:25 392-6626 [1] - 2:2</p>	<p>a.m [1] - 4:1 abandon [1] - 40:7 abandoned [1] - 40:8 ability [1] - 60:7 able [3] - 47:17, 50:2, 50:6 absolute [1] - 52:6 absolutely [9] - 21:2, 33:22, 37:12, 39:23, 44:16, 53:5, 59:19, 75:2, 75:12 absorbent [6] - 11:3, 11:19, 22:12, 28:19, 34:20, 38:5 absorbing [1] - 32:16 absorbs [1] - 31:13 absorption [2] - 29:13, 31:15 absorptive [1] - 35:5 abundantly [1] - 27:13 acceptance [1] - 68:4 accordance [2] - 18:20, 20:21 according [2] - 9:20, 41:17 act [1] - 65:4 action [1] - 71:10 actual [2] - 8:14, 39:16 add [15] - 11:20, 24:5, 29:9, 30:12, 30:13, 30:16, 31:25, 32:14, 32:20, 33:2, 41:21, 42:7, 45:6, 50:14, 68:3 added [8] - 24:4, 29:12, 30:14, 30:19, 33:21, 33:25, 34:6, 38:23 addendum [1] - 63:11 adding [9] - 5:24, 6:1, 15:6, 28:20, 29:11, 31:14, 32:3, 32:5, 51:2 addition [6] - 11:4, 11:12, 15:9, 28:16, 38:4, 38:24 additional [13] - 12:1, 30:12, 30:13, 31:5, 31:6, 32:22, 33:16, 33:18, 33:19, 33:23, 36:17, 41:21, 64:1 address [1] - 14:9 addressed [1] - 53:5 addressing [1] - 15:17 adds [1] - 51:2 adhered [1] - 14:6 adheres [1] - 34:9 adhesive [2] - 33:21, 35:15 adjacent [9] - 13:11, 13:17, 13:20, 13:22, 13:23, 14:2, 14:5, 23:6 admit [1] - 19:5 admitted [4] - 3:6, 3:8, 60:24, 72:9 ago [2] - 10:17, 41:6 agree [4] - 27:9, 50:8, 67:6, 73:25</p>	<p>agreed [1] - 74:24 agreement [5] - 41:16, 42:13, 43:12, 47:25, 60:11 ahead [1] - 64:3 al [2] - 1:4, 64:23 align [1] - 47:6 allegation [1] - 43:25 alleged [2] - 7:24, 8:5 allegedly [1] - 7:21 allow [2] - 68:13, 72:21 allowable [1] - 46:6 allowed [5] - 22:17, 22:21, 24:15, 47:18, 61:2 alluded [1] - 59:20 almost [1] - 42:4 alternate [1] - 16:20 alternative [1] - 71:23 amended [3] - 37:25, 39:11, 64:19 amendments [1] - 64:12 American [1] - 56:24 amorphous [9] - 19:24, 20:4, 20:14, 20:17, 49:23, 49:24, 50:10, 51:15 analysis [1] - 33:6 angle [1] - 20:22 annual [1] - 77:11 answer [3] - 42:22, 58:3, 59:16 antique [2] - 76:14, 76:15 anyway [1] - 74:8 apologies [1] - 52:20 apologize [3] - 15:23, 52:12, 53:2 apparatus [1] - 55:13 apparent [1] - 15:10 Appeals [1] - 52:7 APPEARANCES [1] - 1:12 applicant [1] - 64:19 Applicant [1] - 39:10 application [8] - 22:22, 40:5, 57:3, 57:20, 58:5, 58:6, 58:7, 64:22 applied [2] - 19:1, 61:17 applies [3] - 55:17, 55:18, 64:10 apply [4] - 53:18, 55:18, 58:19, 61:5 appointed [1] - 69:14 appreciate [1] - 63:14 approach [3] - 9:4, 21:15, 60:18 argue [1] - 40:10 argued [2] - 11:23, 14:21 argument [21] - 9:1, 19:13, 19:19, 19:20, 22:7, 31:2, 31:21, 32:19, 36:2, 37:5, 39:21, 49:1, 51:17, 59:4, 61:4, 62:23, 66:6, 66:8, 73:25</p>
0			
0.75 [1] - 18:21			
1			
<p>1 [15] - 1:6, 3:6, 12:3, 37:25, 38:9, 40:8, 47:5, 47:6, 54:11, 56:11, 60:1, 60:22, 60:24, 68:4, 71:8 10,683,607B2 [1] - 68:5 100 [2] - 37:11, 38:13 102 [1] - 38:14 104 [1] - 38:14 106b [1] - 46:3 10:14 [1] - 4:1 11 [1] - 1:20 12 [2] - 61:12, 77:22 120 [1] - 1:14 12:09 [1] - 79:7 1321 [2] - 27:23, 52:19 1349 [2] - 51:24, 52:2 1350 [1] - 37:1 1360 [2] - 52:1, 52:2 1369 [1] - 56:25 16 [1] - 68:5 17 [2] - 38:10, 38:11 1769 [1] - 1:14 18 [1] - 38:17 18-something [1] - 76:13 19 [1] - 39:8</p>	<p>4</p> <p>4 [1] - 55:5 40 [2] - 20:22, 56:1 404 [1] - 1:25 413 [1] - 2:1 419 [1] - 2:2 460 [2] - 51:24, 52:2 46204 [1] - 1:21</p>		
	5		
	<p>556-62 [1] - 47:8 5:22-cv-015-FL [1] - 1:4</p>		
	6		
	<p>6 [2] - 61:11, 64:16 6,946,183 [1] - 64:23 60 [1] - 3:6</p>		
	7		
2	<p>700 [1] - 68:21 72 [1] - 3:8 757 [1] - 1:15 7th [1] - 61:25</p>		
<p>2 [5] - 3:8, 60:2, 72:7, 72:9, 72:13 200-gram [1] - 55:3 2002 [1] - 76:11 2017 [1] - 56:24 2020 [1] - 68:5 2021 [1] - 41:19 2023 [1] - 61:25 2024 [1] - 1:6 231-7339 [1] - 1:21 23185 [1] - 1:15 264-4006 [1] - 1:25 27636 [1] - 1:18 277-9100 [1] - 1:18 28560 [1] - 2:2 2900 [1] - 1:24</p>	<p>8</p> <p>8 [2] - 26:2, 26:14 831 [1] - 37:1 875 [1] - 56:25</p>		
	9		
	<p>919 [1] - 1:18</p>		

<p>66:10 arguments [6] - 12:24, 13:1, 21:5, 21:12, 57:16, 68:3 Art [1] - 61:17 art [16] - 5:4, 24:20, 25:17, 46:6, 46:11, 47:19, 49:19, 54:17, 56:18, 58:9, 58:12, 59:10, 60:5, 61:7, 62:12, 67:15 article [2] - 28:3, 28:4 aside [1] - 7:20 assessment [1] - 48:24 assessments [1] - 73:6 associated [2] - 52:9, 54:2 assuming [1] - 73:1 assured [1] - 23:17 Atlanta [3] - 1:24, 77:21, 77:24 attached [4] - 14:3, 14:5, 50:24, 73:13 attachment [4] - 24:1, 24:2, 65:4 attempting [4] - 9:15, 16:24, 18:8, 20:12 attention [5] - 47:2, 62:15, 72:3, 75:18, 75:20 attorney [2] - 15:24, 75:8 availability [1] - 71:24 available [4] - 19:1, 42:19, 59:23, 71:21 average [1] - 20:22 avoid [3] - 26:24, 27:2, 29:2 aware [5] - 5:1, 10:21, 13:13, 36:18, 61:1</p>	<p>61:11, 62:22 begins [1] - 50:2 behalf [4] - 4:17, 61:10, 63:3, 73:7 behind [1] - 8:15 Bell [1] - 46:12 below [2] - 50:1, 56:8 bench [1] - 79:1 beneficial [1] - 68:25 Bern [2] - 1:5, 2:2 best [3] - 19:22, 71:23, 78:16 better [3] - 70:23, 78:7, 78:8 between [21] - 6:7, 6:18, 10:1, 10:8, 11:20, 12:20, 13:21, 14:1, 29:17, 30:17, 31:1, 33:2, 34:11, 47:9, 49:12, 50:23, 53:16, 54:23, 57:3, 65:5 beyond [1] - 51:12 bicycle [5] - 29:11, 30:19, 32:4, 32:5, 32:6 bigger [3] - 15:12, 65:19 Billsburg [1] - 76:19 bit [6] - 4:23, 5:7, 10:19, 24:12, 54:7, 69:6 black [1] - 25:7 block [1] - 78:18 blue [1] - 26:12 Board [1] - 52:6 book [1] - 21:17 borne [1] - 12:24 bother [1] - 48:5 bottom [16] - 10:7, 11:4, 11:19, 14:15, 17:11, 23:9, 26:7, 30:16, 30:18, 31:13, 32:17, 34:8, 35:6, 35:13, 35:24, 45:25 bound [1] - 61:23 boundary [8] - 15:6, 15:15, 15:16, 20:10, 20:17, 48:19, 50:11, 50:15 Box [1] - 1:17 BOYLE [4] - 4:7, 72:15, 78:5, 78:14 Boyle [3] - 1:17, 4:8, 78:2 brakes [3] - 19:15, 19:16, 19:18 breakfast [1] - 78:21 brewery [3] - 76:17, 76:18, 77:4 Brewery [1] - 76:20 bribe [1] - 72:15 brief [6] - 12:10, 12:11, 58:21, 59:6, 63:11, 64:16 briefed [1] - 62:13 briefing [4] - 26:15, 26:17, 45:22, 46:9 briefly [2] - 44:13, 46:8</p>	<p>bring [4] - 60:14, 62:14, 72:2, 75:18 bringing [1] - 5:15 Broad [1] - 78:17 broad [1] - 23:8 broker [1] - 23:15 brought [2] - 74:8, 75:20 bubble [3] - 29:20, 30:18, 31:17 built [1] - 76:11 bump [22] - 16:3, 16:4, 16:5, 16:7, 16:16, 16:25, 17:2, 17:13, 17:21, 50:2, 50:3, 50:6, 50:7, 50:22, 50:24, 50:25, 51:10, 65:16, 65:25, 67:19 bumps [64] - 11:6, 14:11, 14:19, 15:2, 15:11, 15:19, 15:21, 16:9, 16:11, 16:15, 16:17, 16:20, 16:22, 16:23, 17:5, 17:6, 17:11, 17:19, 18:4, 18:11, 24:11, 24:16, 24:18, 44:19, 44:21, 45:1, 45:2, 45:13, 45:15, 46:3, 46:4, 46:15, 46:16, 46:18, 47:7, 47:9, 47:12, 48:13, 48:14, 48:15, 48:18, 48:22, 49:4, 49:5, 49:14, 49:25, 50:20, 65:18, 65:19, 65:23, 65:24, 66:2, 66:9, 67:2, 67:3, 67:4, 67:8 bumpy [2] - 10:7, 34:15 Byers [5] - 1:13, 1:13, 4:11, 10:13, 27:8 BYERS [76] - 4:12, 4:22, 5:22, 6:7, 6:10, 6:14, 6:17, 6:21, 7:4, 7:8, 7:12, 7:17, 8:4, 8:25, 9:8, 9:19, 10:1, 10:5, 10:11, 10:14, 10:16, 13:10, 17:4, 17:16, 21:9, 26:12, 27:9, 27:24, 31:3, 32:10, 33:18, 34:7, 34:16, 34:24, 35:4, 35:15, 41:20, 42:1, 42:3, 43:1, 43:3, 43:7, 43:16, 50:17, 51:9, 52:16, 53:1, 59:18, 60:20, 60:23, 61:1, 62:19, 63:19, 64:4, 66:15, 66:18, 67:23, 68:9, 68:13, 68:17, 69:17, 69:23, 72:4, 72:8, 72:14, 74:18, 75:24, 76:4, 76:8, 76:11, 76:14, 76:19, 76:24, 77:5, 77:10, 78:11</p>	<p>cannot [3] - 25:20, 26:24, 28:16 canvas [7] - 10:6, 14:16, 40:14, 41:2, 41:23, 42:18, 42:25 car [1] - 19:15 careful [1] - 31:24 carefully [2] - 75:6, 75:9 CAROLINA [1] - 1:1 Carolina [2] - 1:5, 4:16 carve [1] - 68:25 carved [1] - 63:16 case [48] - 4:3, 10:21, 25:23, 26:16, 26:17, 26:20, 26:25, 27:12, 27:17, 27:18, 27:25, 28:8, 28:9, 28:11, 29:24, 30:24, 31:5, 31:10, 33:1, 36:1, 36:18, 36:22, 37:9, 42:24, 43:6, 48:9, 51:22, 52:11, 52:16, 52:20, 52:25, 56:23, 57:1, 57:5, 57:18, 57:22, 57:25, 58:3, 58:14, 69:12, 70:6, 70:15, 70:23, 71:5, 71:17, 72:18, 74:8 cases [5] - 4:25, 17:21, 58:23, 68:22, 71:5 catch [1] - 77:16 century [1] - 36:25 Ceramics [1] - 56:25 certain [4] - 5:23, 22:7, 34:9, 61:2 certainly [7] - 16:13, 19:19, 20:16, 69:10, 70:8, 74:3, 74:6 certainty [1] - 58:13 chance [2] - 61:22, 68:11 change [7] - 30:2, 31:8, 31:9, 31:15, 31:16, 32:15, 34:6 changed [7] - 12:3, 23:18, 23:21, 35:8, 35:13, 36:16, 38:22 changing [2] - 30:21, 30:23 characteristics [2] - 29:13, 30:22 check [2] - 37:11, 41:18 chemical [5] - 27:1, 27:4, 28:9, 30:3, 31:6 chew [1] - 68:15 Chic's [1] - 10:18 child [1] - 10:19 choose [1] - 68:9 chose [1] - 24:7 Christmas [2] - 72:17, 72:20 chuckled [1] - 24:12 circuit [1] - 36:4 Circuit [13] - 27:13, 27:24, 28:15, 29:24, 32:19, 32:24,</p>
B			
<p>background [2] - 4:24, 8:8 backlog [1] - 42:20 backup [1] - 37:15 Bar [5] - 4:8, 4:10, 4:16, 77:11 bargain [1] - 24:21 Barnes [4] - 1:19, 1:22, 4:16, 4:18 base [2] - 17:7, 17:8 based [9] - 8:10, 12:8, 12:12, 12:19, 25:4, 56:15, 58:3, 68:3, 77:21 basis [4] - 22:5, 45:14, 47:17, 60:8 basket [1] - 44:5 Beach [2] - 10:17, 10:18 beer [2] - 76:16, 76:21 BEFORE [1] - 1:10 beg [1] - 8:19 began [1] - 22:10 beginning [4] - 28:1, 41:19,</p>			
C			
	<p>calculus [1] - 51:16 Canary [1] - 76:2 canceled [1] - 41:17</p>		

<p>51:23, 52:2, 52:4, 56:24, 57:12, 57:19, 57:22</p> <p>Circuit's [2] - 31:22, 34:2</p> <p>circumference [22] - 15:4, 15:12, 16:4, 16:5, 16:17, 17:2, 17:7, 17:8, 17:12, 17:14, 17:20, 17:21, 17:22, 17:23, 18:2, 18:5, 18:6, 18:11, 18:13, 49:7, 51:10, 66:1</p> <p>circumferences [2] - 15:3, 49:5</p> <p>circumferential [9] - 14:12, 14:20, 15:20, 15:22, 44:20, 44:22, 46:17, 46:19, 48:16</p> <p>circumferentially [12] - 16:9, 16:10, 16:16, 24:17, 24:18, 45:3, 45:4, 47:12, 47:13, 67:3, 67:4, 67:20</p> <p>circumstances [6] - 7:21, 34:9, 57:4, 57:21, 61:3, 69:25</p> <p>citation [6] - 27:1, 27:21, 27:23, 43:18, 52:1, 52:12</p> <p>cite [2] - 52:15, 59:22</p> <p>cited [1] - 58:21</p> <p>cites [1] - 64:17</p> <p>Claim [6] - 1:6, 12:3, 37:25, 40:8, 54:11, 56:11</p> <p>claim [94] - 4:3, 7:22, 9:1, 11:13, 11:14, 11:18, 11:22, 12:10, 12:11, 12:15, 13:14, 13:15, 14:10, 14:13, 15:7, 15:18, 15:24, 16:12, 16:14, 16:25, 17:10, 17:16, 18:9, 18:14, 18:17, 18:23, 19:1, 19:14, 20:14, 20:16, 20:20, 21:1, 21:4, 22:21, 23:12, 23:20, 24:8, 24:15, 25:7, 25:14, 25:17, 25:25, 28:2, 29:15, 33:7, 36:23, 37:6, 37:8, 37:13, 37:17, 37:23, 38:20, 39:11, 39:19, 42:24, 43:22, 44:18, 44:25, 47:1, 48:3, 50:18, 51:25, 52:8, 54:15, 55:21, 56:14, 56:18, 56:20, 57:12, 57:14, 58:14, 58:16, 58:19, 58:24, 59:6, 59:21, 61:3, 61:5, 61:23, 62:7, 63:24, 64:15, 64:20, 65:22, 66:3, 66:21, 66:22, 67:13, 67:23, 69:19, 73:8, 74:10, 74:16, 75:1</p> <p>CLAIM [1] - 1:10</p> <p>claimed [6] - 14:18, 14:21, 19:15, 28:5, 28:11, 40:9</p> <p>claiming [4] - 9:23, 12:16, 33:1, 42:7</p> <p>claims [40] - 7:23, 11:10, 11:24, 13:1, 13:7, 16:1,</p>	<p>20:13, 22:17, 22:19, 22:23, 23:14, 25:1, 25:11, 27:10, 28:13, 28:17, 28:22, 30:14, 30:23, 31:8, 32:1, 33:3, 36:3, 38:18, 39:5, 39:7, 40:5, 40:9, 40:17, 42:7, 47:16, 47:18, 49:20, 51:3, 51:18, 56:22, 57:7, 57:24, 58:11, 65:17</p> <p>clarification [3] - 19:21, 24:6, 47:24</p> <p>clarify [2] - 19:8, 43:22</p> <p>clarity's [1] - 5:13</p> <p>clean [1] - 34:23</p> <p>clear [29] - 5:23, 7:2, 7:13, 8:16, 9:15, 12:20, 27:13, 28:15, 30:6, 31:23, 33:11, 36:5, 39:13, 40:2, 42:14, 50:19, 51:10, 53:18, 55:7, 59:7, 60:10, 62:21, 62:22, 66:3, 67:12, 69:17, 75:6, 75:7, 75:12</p> <p>clearly [3] - 18:25, 46:25, 64:17</p> <p>clerk [3] - 9:5, 72:12, 79:2</p> <p>CLERK [1] - 78:22</p> <p>clerk's [1] - 72:22</p> <p>clerks [1] - 72:16</p> <p>client [1] - 65:9</p> <p>client's [7] - 8:10, 8:12, 10:23, 42:5, 42:8, 60:8, 69:24</p> <p>clients [6] - 12:17, 12:21, 32:13, 48:10, 70:24, 71:4</p> <p>close [5] - 13:18, 14:7, 52:7, 70:10, 72:1</p> <p>closed [9] - 25:8, 25:17, 27:7, 27:11, 28:6, 31:24, 36:6, 36:24, 39:19</p> <p>closing [4] - 23:20, 38:25, 39:12, 64:20</p> <p>cloth [17] - 5:15, 5:20, 5:21, 5:25, 6:3, 10:23, 11:1, 11:10, 11:14, 11:22, 17:1, 22:23, 24:7, 34:23, 38:13, 54:3, 54:4</p> <p>cloths [9] - 5:9, 5:25, 8:9, 9:12, 15:9, 29:19, 42:11, 42:19, 60:7</p> <p>coefficient [6] - 18:19, 55:21, 55:23, 56:4, 56:12, 59:14</p> <p>coefficients [1] - 60:9</p> <p>colleague [3] - 4:17, 27:17, 63:21</p> <p>colleagues [1] - 19:7</p> <p>color [2] - 6:10, 41:21</p> <p>Column [1] - 61:11</p> <p>combinations [1] - 46:13</p> <p>command [1] - 63:17</p> <p>Commenced [1] - 4:1</p>	<p>comment [2] - 47:22, 47:23</p> <p>communications [1] - 74:20</p> <p>Company [1] - 77:6</p> <p>compare [3] - 5:17, 17:5, 17:13</p> <p>compared [1] - 17:20</p> <p>comparing [1] - 66:2</p> <p>comparison [3] - 16:2, 16:4, 18:10</p> <p>compel [1] - 73:1</p> <p>complaint [1] - 73:12</p> <p>completely [1] - 43:9</p> <p>complicates [1] - 51:18</p> <p>Components [1] - 56:24</p> <p>comprise [1] - 64:25</p> <p>comprising [12] - 14:11, 22:24, 22:25, 23:18, 23:22, 25:3, 27:5, 37:16, 37:25, 38:19, 48:15, 73:17</p> <p>concede [2] - 62:5</p> <p>concerning [1] - 73:5</p> <p>Concluded [1] - 79:7</p> <p>conclusion [1] - 70:13</p> <p>confident [1] - 24:20</p> <p>confirm [2] - 6:22, 49:9</p> <p>connected [1] - 45:16</p> <p>connection [1] - 44:24</p> <p>Conoco [3] - 51:22, 52:20, 64:4</p> <p>consider [4] - 61:2, 61:22, 62:7, 62:12</p> <p>consideration [1] - 71:1</p> <p>considered [3] - 13:22, 36:6, 36:7</p> <p>considering [1] - 32:19</p> <p>consist [1] - 38:3</p> <p>consistent [1] - 38:7</p> <p>consisting [37] - 11:15, 12:3, 13:4, 22:25, 23:18, 23:22, 25:3, 25:7, 25:24, 26:22, 27:5, 27:6, 27:10, 28:2, 28:7, 28:13, 28:19, 29:25, 31:23, 33:4, 33:7, 34:2, 36:5, 36:14, 37:16, 38:1, 38:22, 39:2, 39:22, 43:8, 51:21, 52:3, 52:18, 64:9, 73:17, 74:4</p> <p>constituting [1] - 73:5</p> <p>constructed [5] - 9:13, 9:20, 14:18, 17:1, 50:21</p> <p>construction [46] - 4:3, 7:22, 9:1, 10:23, 11:13, 12:10, 12:11, 12:16, 13:18, 15:1, 15:15, 15:25, 19:4, 20:4, 25:2, 25:12, 25:13, 25:25, 37:8, 37:13, 37:17, 43:23, 44:10, 45:8, 48:3, 49:3, 49:23, 50:9, 51:25, 53:4, 57:13, 57:14, 58:24,</p>	<p>59:6, 59:22, 61:3, 61:23, 62:7, 63:24, 64:16, 66:13, 67:17, 69:20, 74:10, 74:16, 75:1</p> <p>Construction [1] - 1:6</p> <p>CONSTRUCTION [1] - 1:10</p> <p>constructions [1] - 48:25</p> <p>construe [2] - 17:10, 39:22</p> <p>construed [3] - 20:9, 37:6, 67:18</p> <p>contacting [1] - 35:24</p> <p>contemplated [1] - 11:25</p> <p>contemplates [1] - 17:18</p> <p>contended [1] - 46:22</p> <p>contention [5] - 11:8, 14:13, 44:9, 49:12, 49:17</p> <p>context [4] - 37:3, 37:5, 53:7, 67:21</p> <p>continued [1] - 12:4</p> <p>contrary [3] - 25:6, 25:13, 25:14</p> <p>control [1] - 72:23</p> <p>conversation [2] - 28:1, 71:20</p> <p>cool [2] - 78:11, 78:13</p> <p>Cork [1] - 78:17</p> <p>corner [2] - 5:10, 9:8</p> <p>Corporation [1] - 56:25</p> <p>Correct [1] - 40:15</p> <p>correct [14] - 6:17, 7:3, 10:2, 10:14, 28:8, 29:18, 41:20, 43:7, 48:8, 57:17, 59:19, 63:21, 66:15, 66:18</p> <p>corrected [1] - 64:15</p> <p>correction [1] - 51:20</p> <p>cost [1] - 71:7</p> <p>counsel [26] - 4:9, 6:23, 8:19, 8:22, 21:25, 22:3, 22:11, 25:3, 25:21, 26:17, 26:21, 28:8, 40:22, 42:16, 47:23, 48:10, 49:13, 51:22, 53:14, 61:25, 62:14, 67:6, 70:5, 73:14, 73:20, 75:8</p> <p>counsel's [2] - 25:12, 61:10</p> <p>counsels [1] - 71:8</p> <p>countenance [1] - 31:21</p> <p>County [1] - 4:8</p> <p>couple [5] - 38:17, 43:21, 45:12, 54:12, 63:25</p> <p>course [3] - 21:15, 23:11, 64:9</p> <p>COURT [129] - 1:1, 4:2, 4:14, 4:19, 6:5, 6:9, 6:12, 6:15, 6:20, 7:6, 7:10, 7:16, 7:25, 8:17, 9:2, 9:7, 9:18, 9:24, 10:3, 10:9, 10:12, 10:15, 13:9, 17:3, 17:15, 21:8, 21:11, 21:16, 21:20, 22:8, 25:23, 26:3, 26:6, 26:9, 26:13, 27:8, 30:25, 32:8,</p>
---	---	--	---

<p>33:14, 34:4, 34:13, 34:22, 35:3, 35:7, 36:9, 37:2, 37:8, 37:19, 40:13, 40:16, 41:1, 41:4, 41:7, 41:13, 41:22, 42:2, 42:24, 43:2, 43:5, 43:14, 43:20, 44:4, 44:13, 47:3, 47:20, 48:7, 48:12, 48:21, 49:2, 49:10, 49:21, 50:8, 50:13, 51:7, 52:14, 52:21, 53:8, 53:21, 54:3, 56:23, 57:17, 59:12, 59:16, 60:19, 60:21, 61:19, 62:3, 62:17, 63:7, 63:9, 63:15, 64:3, 66:5, 66:11, 66:16, 67:22, 67:25, 68:11, 68:15, 68:18, 69:15, 69:21, 70:2, 70:12, 72:6, 72:11, 72:16, 73:3, 73:22, 74:9, 74:17, 75:13, 75:25, 76:7, 76:9, 76:12, 76:18, 76:22, 77:1, 77:7, 77:13, 77:16, 77:20, 77:23, 78:2, 78:7, 78:13, 78:15, 78:23</p> <p>Court [52] - 2:1, 4:9, 4:23, 5:1, 5:6, 5:8, 5:11, 5:16, 8:7, 8:13, 8:16, 9:6, 9:9, 9:11, 9:16, 13:6, 13:11, 13:13, 14:9, 15:9, 15:17, 20:3, 20:7, 21:9, 25:2, 31:21, 42:16, 43:8, 43:19, 43:23, 47:6, 48:5, 51:5, 59:19, 59:24, 60:14, 61:1, 62:6, 63:23, 63:24, 64:11, 65:14, 65:17, 66:19, 68:19, 69:3, 69:20, 70:14, 70:19, 71:20, 74:7, 74:15</p> <p>court [2] - 36:25, 72:15</p> <p>Court's [7] - 12:15, 48:2, 56:14, 61:23, 63:20, 68:4, 68:24</p> <p>Courts [1] - 58:23</p> <p>courts [1] - 37:1</p> <p>cover [2] - 11:10, 14:16</p> <p>covered [4] - 20:15, 25:24, 28:20, 64:5</p> <p>covers [1] - 10:23</p> <p>crack [1] - 70:3</p> <p>created [1] - 76:10</p> <p>critical [1] - 24:10</p> <p>CRR [1] - 2:1</p> <p>crux [1] - 46:20</p> <p>curiously [1] - 59:3</p> <p>custody [1] - 72:22</p> <p>customary [7] - 13:15, 13:16, 14:5, 14:8, 15:5, 20:1, 20:2</p> <p>cut [4] - 9:8, 27:10, 54:3, 54:4</p> <p>cutout [1] - 72:7</p> <p>cutting [2] - 53:24, 54:7</p>	<p style="text-align: center;">D</p> <p>damage [1] - 29:2</p> <p>date [1] - 62:17</p> <p>dated [1] - 68:5</p> <p>dates [2] - 70:19, 71:24</p> <p>days [2] - 68:2, 68:15</p> <p>deal [3] - 22:4, 23:15, 59:12</p> <p>deals [1] - 31:4</p> <p>dealt [1] - 5:1</p> <p>Deborah [2] - 1:20, 4:18</p> <p>December [2] - 69:6, 69:22</p> <p>decide [3] - 43:8, 51:5, 71:12</p> <p>decided [3] - 43:5, 56:24, 73:24</p> <p>decides [2] - 25:24, 68:19</p> <p>deciding [1] - 29:16</p> <p>decision [2] - 41:11, 63:24</p> <p>decisions [1] - 70:25</p> <p>decrease [1] - 29:9</p> <p>deeply [1] - 79:4</p> <p>Defendant [2] - 1:8, 1:19</p> <p>defendant [9] - 4:14, 4:17, 27:2, 34:6, 53:3, 57:15, 63:3, 66:19, 72:24</p> <p>defendant's [10] - 15:14, 16:8, 17:4, 19:3, 20:24, 29:18, 32:18, 66:5, 66:13, 69:18</p> <p>defendants [16] - 5:14, 11:17, 12:7, 12:16, 13:23, 14:22, 16:24, 18:7, 19:6, 20:8, 20:11, 28:11, 61:10, 64:7, 65:16, 75:12</p> <p>defenses [1] - 44:7</p> <p>defined [2] - 18:25, 48:17</p> <p>definitely [1] - 79:4</p> <p>definition [3] - 20:3, 20:6, 56:8</p> <p>definitions [1] - 56:7</p> <p>degree [1] - 55:16</p> <p>degrees [1] - 20:23</p> <p>demonstrative [1] - 5:7</p> <p>dental [1] - 52:18</p> <p>dependent [1] - 40:8</p> <p>described [2] - 51:11, 56:6</p> <p>describes [4] - 38:8, 47:8, 56:2, 56:3</p> <p>Description [1] - 3:4</p> <p>description [1] - 65:22</p> <p>detail [1] - 53:24</p> <p>detailed [2] - 52:3, 54:1</p> <p>details [1] - 55:12</p> <p>determination [2] - 56:4, 71:9</p> <p>determinations [1] - 9:16</p> <p>determine [7] - 49:19, 56:9, 56:10, 56:15, 58:9, 58:12,</p>	<p>66:2</p> <p>determining [2] - 36:14, 37:14</p> <p>device [1] - 28:10</p> <p>dictionary [1] - 20:6</p> <p>difference [5] - 6:7, 10:4, 10:5, 14:1, 48:24</p> <p>differences [1] - 6:18</p> <p>different [26] - 6:24, 12:18, 14:12, 14:19, 15:3, 15:19, 17:19, 18:1, 25:4, 44:20, 45:2, 45:12, 45:15, 46:16, 47:8, 48:15, 49:5, 53:19, 54:12, 54:13, 55:24, 56:8, 64:25, 65:25, 66:9, 66:14</p> <p>digest [1] - 63:10</p> <p>directed [2] - 22:23, 40:6</p> <p>direction [4] - 70:14, 71:21, 74:6</p> <p>directly [8] - 8:11, 14:2, 17:24, 33:23, 51:25, 56:1, 56:3, 61:4</p> <p>discernable [1] - 6:18</p> <p>discernible [1] - 50:3</p> <p>disclaimed [3] - 47:14, 67:1, 67:5</p> <p>disclosable [1] - 75:3</p> <p>disclosed [2] - 73:20, 74:22</p> <p>disclosure [1] - 62:18</p> <p>discoverable [2] - 74:21, 75:3</p> <p>discovery [3] - 43:15, 70:20, 71:18</p> <p>discrepancy [1] - 54:23</p> <p>discuss [2] - 8:23, 69:25</p> <p>discussed [4] - 22:1, 22:3, 69:18, 73:18</p> <p>discusses [1] - 9:22</p> <p>discussing [2] - 7:5, 52:17</p> <p>discussion [2] - 12:20, 52:3</p> <p>discussions [2] - 5:9, 69:11</p> <p>dispose [1] - 13:12</p> <p>dispositive [3] - 13:5, 13:6, 25:21</p> <p>dispute [7] - 14:4, 42:15, 57:19, 58:6, 62:10, 64:11</p> <p>disputes [4] - 57:2, 57:5, 57:6, 57:22</p> <p>dissatisfied [1] - 75:16</p> <p>distinction [1] - 29:23</p> <p>DISTRICT [3] - 1:1, 1:1, 1:11</p> <p>DIVISION [1] - 1:2</p> <p>docket [1] - 63:18</p> <p>Docket [1] - 1:4</p> <p>documents [3] - 62:11, 73:5, 73:15</p> <p>done [3] - 34:22, 59:25, 76:14</p> <p>double [1] - 41:18</p>	<p>doubt [1] - 39:3</p> <p>down [16] - 19:16, 19:19, 24:25, 32:7, 34:10, 34:11, 37:18, 48:13, 63:8, 64:2, 71:17, 73:4, 76:17, 76:23, 77:8, 78:18</p> <p>downtown [2] - 78:12, 78:13</p> <p>downward [5] - 14:10, 15:2, 48:14, 48:18, 49:4</p> <p>draft [1] - 73:6</p> <p>drafted [1] - 44:24</p> <p>draw [1] - 47:1</p> <p>drawn [1] - 46:4</p> <p>drop [21] - 5:9, 5:15, 5:20, 5:21, 5:24, 5:25, 6:3, 8:9, 9:12, 10:23, 11:1, 11:10, 11:21, 15:9, 17:1, 24:7, 29:19, 42:10, 42:18, 54:3, 60:7</p> <p>Duncan [2] - 1:13, 4:11</p> <p>during [4] - 12:17, 23:11, 30:7, 47:14</p> <p style="text-align: center;">E</p> <p>early [2] - 69:11, 70:5</p> <p>EASTERN [1] - 1:1</p> <p>easy [2] - 37:20, 45:24</p> <p>eat [3] - 78:3, 78:10, 78:20</p> <p>edification [1] - 9:11</p> <p>educate [1] - 8:7</p> <p>effect [1] - 49:14</p> <p>effectively [1] - 49:15</p> <p>eggs [1] - 44:4</p> <p>either [6] - 33:9, 44:11, 50:18, 65:3, 69:4, 75:16</p> <p>electronics [1] - 21:21</p> <p>element [3] - 31:5, 35:25, 36:17</p> <p>Elements [2] - 37:23, 38:3</p> <p>elements [6] - 22:15, 23:9, 27:16, 29:8, 36:24, 37:24</p> <p>eliminate [1] - 43:24</p> <p>eliminated [1] - 48:2</p> <p>Ellis [2] - 1:17, 4:8</p> <p>embodiment [7] - 7:3, 9:22, 38:2, 38:8, 40:6, 45:25, 67:14</p> <p>embodiments [10] - 8:23, 11:25, 16:20, 16:22, 45:12, 46:2, 47:11, 47:15, 66:25, 67:1</p> <p>end [3] - 28:1, 43:16, 71:14</p> <p>ended [3] - 37:7, 38:2, 46:1</p> <p>ends [1] - 50:3</p> <p>enhance [1] - 35:23</p> <p>enhanced [1] - 33:20</p> <p>enlightening [1] - 56:19</p>
---	---	---	--

<p>entire [1] - 33:8 entirely [2] - 26:24, 27:7 entitled [2] - 38:1, 73:19 equating [1] - 65:2 equivalent [1] - 65:3 especially [1] - 18:9 essential [1] - 63:1 essentially [7] - 11:7, 22:15, 28:4, 28:9, 29:25, 30:24, 66:20 essentials [1] - 69:23 establish [1] - 73:21 established [1] - 74:4 et [2] - 1:4, 64:23 evaluations [1] - 73:6 evidence [9] - 3:7, 3:9, 60:25, 61:2, 61:24, 72:10, 73:23, 74:7, 74:19 exact [1] - 16:19 exactly [14] - 7:13, 8:7, 18:22, 18:23, 19:6, 37:5, 38:22, 39:6, 43:10, 45:16, 50:7, 62:2, 67:16, 69:9 examined [1] - 5:10 examiner [17] - 12:25, 24:19, 30:7, 39:6, 39:10, 39:16, 39:17, 45:6, 45:17, 46:10, 64:11, 64:13, 64:18, 64:22, 65:2, 67:16 examiner's [1] - 40:3 examining [1] - 7:24 example [10] - 13:19, 19:14, 33:15, 33:20, 35:7, 35:9, 35:12, 49:21, 59:12, 70:20 except [4] - 31:18, 52:9, 67:1, 72:21 excerpts [1] - 56:1 exhibit [1] - 62:20 Exhibit [8] - 3:6, 3:8, 60:22, 60:24, 68:4, 72:7, 72:9, 72:13 exhibits [1] - 5:7 exist [2] - 25:9, 36:19 expensive [1] - 71:4 expert [5] - 58:25, 74:22, 74:23, 74:25, 75:7 explained [2] - 27:25, 70:5 explicit [1] - 52:4 extent [1] - 39:3 extrinsic [4] - 61:2, 61:24, 73:22, 74:19 eyeball [1] - 49:15</p>	<p>fact [6] - 38:19, 48:1, 53:13, 55:9, 57:13, 59:13 factor [1] - 74:11 factors [1] - 74:9 facts [1] - 52:10 factual [1] - 26:20 fail [1] - 46:13 failed [1] - 63:1 fails [5] - 33:4, 33:5, 33:6 failure [1] - 63:1 fair [2] - 33:14, 48:24 fairly [6] - 5:2, 5:5, 7:20, 10:22, 13:12, 31:11 fall [1] - 41:13 falling [3] - 41:8, 41:14, 41:16 falls [2] - 34:1, 49:20 far [1] - 77:9 fasten [1] - 23:10 fastening [1] - 23:7 Fat [1] - 76:1 fat [1] - 66:17 February [1] - 1:6 Federal [15] - 27:12, 27:24, 28:15, 29:23, 31:22, 32:19, 32:24, 34:1, 51:23, 52:2, 52:4, 56:23, 57:11, 57:18, 57:22 federal [1] - 36:4 fees [1] - 40:20 fell [2] - 34:14, 62:25 fence [1] - 13:21 ferry [1] - 76:6 few [1] - 78:5 Figure [4] - 38:9, 47:5, 47:6, 55:5 figure [3] - 25:18, 56:17, 58:19 figures [1] - 65:22 filed [4] - 22:22, 40:4, 69:12, 70:7 filled [1] - 33:21 final [1] - 20:19 finally [1] - 60:14 firm [2] - 61:10, 63:3 first [18] - 10:25, 11:14, 16:5, 21:16, 21:18, 22:1, 22:20, 22:22, 25:9, 27:10, 39:1, 40:4, 53:13, 53:19, 59:18, 64:4, 66:23, 74:2 fits [1] - 56:18 five [3] - 35:20, 68:2, 68:15 five-year-old [1] - 35:20 FLANAGAN [1] - 1:10 flat [1] - 49:25 flip [3] - 21:21, 21:22, 21:23 flows [1] - 50:5 focus [3] - 40:23, 49:1, 70:17</p>	<p>focused [6] - 33:13, 35:11, 54:11, 64:8, 65:10, 68:22 follow [5] - 23:2, 23:3, 32:18, 38:9, 58:10 followed [1] - 55:8 following [1] - 30:25 food [3] - 76:24, 77:3, 78:16 forced [1] - 40:7 foresee [2] - 48:5, 51:1 forget [1] - 70:15 formal [1] - 71:21 forth [1] - 67:14 fortunately [1] - 56:13 forward [2] - 63:17, 74:15 frankly [3] - 13:5, 62:14, 67:6 free [1] - 70:17 friction [9] - 18:20, 53:16, 55:22, 55:23, 56:5, 56:9, 56:10, 56:12, 59:14 friend [1] - 77:19 front [3] - 70:3, 73:4, 78:19 fruitful [1] - 69:19 functional [1] - 29:8 functionality [17] - 9:13, 19:13, 28:5, 29:9, 29:10, 29:22, 30:1, 30:2, 31:4, 31:8, 32:3, 32:5, 32:15, 33:24, 35:13, 36:16 functioning [1] - 32:6 functions [3] - 10:25, 31:9, 32:16 fundamental [1] - 30:21 fused [1] - 14:6 future [1] - 75:17</p>	<p>50:20, 50:23, 50:24, 50:25, 51:11, 65:23, 65:24, 67:21 grippiness [1] - 35:13 grippy [2] - 34:15, 35:8 ground [1] - 68:18 guess [1] - 50:14</p>
<p>F</p> <p>F.3d [6] - 27:23, 37:1, 51:24, 52:2, 52:19, 56:25 fabric [1] - 65:5 facilitate [1] - 71:12</p>		<p>G</p> <p>GA [1] - 1:24 gallon [1] - 34:19 gallons [1] - 35:2 gaps [2] - 34:12, 35:24 gee [1] - 11:3 given [7] - 9:6, 13:15, 20:2, 57:2, 69:18, 71:2, 75:15 glow [1] - 32:20 goodness [1] - 60:11 gotcha [1] - 35:3 gradient [1] - 34:10 granted [1] - 67:16 great [3] - 53:24, 76:2, 76:21 greater [13] - 15:20, 16:6, 16:10, 16:15, 17:13, 17:22, 18:3, 18:12, 18:21, 35:16, 35:23, 44:21, 46:17 grew [1] - 10:15 grid [14] - 11:5, 22:13, 44:25, 45:16, 50:1, 50:5,</p>	<p>H</p> <p>half [2] - 10:17, 47:7 halfway [1] - 77:8 halt [1] - 68:19 hand [2] - 7:16, 54:25 handled [1] - 61:9 handles [2] - 29:11, 30:19 hands [2] - 6:5, 69:2 hanging [1] - 72:19 happy [1] - 53:10 hard [6] - 25:15, 36:20, 58:15, 64:8, 71:1, 79:3 Harrison [1] - 46:12 hate [1] - 7:18 hear [4] - 9:4, 21:12, 22:24, 23:19 heard [2] - 36:13, 65:14 Hearing [1] - 1:6 hearing [1] - 63:10 HEARING [1] - 1:10 heart [1] - 60:12 heavily [1] - 40:24 height [28] - 15:18, 15:20, 16:6, 16:10, 16:16, 16:21, 16:23, 17:2, 17:13, 17:22, 18:1, 18:3, 18:5, 18:12, 24:17, 44:19, 44:21, 45:1, 45:3, 46:3, 46:15, 46:17, 50:20, 65:19, 66:1, 67:3 heights [2] - 11:6, 18:2 held [2] - 57:15, 58:23 help [3] - 5:6, 71:11, 71:13 helpful [2] - 45:23, 68:1 herein [1] - 61:15 higher [3] - 17:1, 18:5, 18:12 himself [1] - 46:11 hip [1] - 63:20 history [23] - 11:9, 11:24, 12:7, 12:19, 12:24, 14:24, 16:14, 25:5, 25:18, 30:6, 30:7, 33:10, 38:16, 39:4, 39:9, 39:16, 40:2, 51:5, 64:18, 65:8, 65:21, 67:13 holding [3] - 37:2, 37:4, 57:2 holds [1] - 77:11 Honor [100] - 4:7, 4:12, 4:15, 4:23, 5:19, 5:23, 6:11, 6:17, 7:9, 7:12, 7:15, 7:18, 8:5, 8:9, 8:18, 8:25, 9:9,</p>

10:2, 10:6, 10:14, 10:21, 13:8, 15:23, 20:19, 21:10, 21:13, 22:6, 23:20, 24:12, 24:13, 24:19, 24:22, 26:1, 27:1, 27:9, 27:20, 27:25, 28:24, 31:3, 31:11, 34:7, 34:17, 34:25, 36:11, 37:10, 40:18, 41:3, 41:20, 41:25, 42:1, 43:1, 43:7, 43:21, 44:8, 44:11, 44:17, 45:9, 46:2, 47:2, 47:10, 47:21, 48:20, 48:23, 50:12, 50:17, 51:14, 51:20, 52:12, 52:17, 53:1, 56:12, 58:4, 58:25, 59:15, 60:18, 60:23, 61:21, 62:4, 62:19, 63:6, 63:13, 63:19, 66:15, 66:18, 67:23, 68:9, 68:13, 68:17, 69:14, 69:17, 69:24, 70:4, 72:5, 72:8, 72:25, 73:11, 74:2, 74:5, 74:18, 75:24 HONORABLE [1] - 1:10 house [4] - 13:20, 76:11, 76:14 houses [2] - 14:1, 76:15 Hungry [1] - 76:25 husband [1] - 77:7	inconsistency [1] - 55:20 incorporate [1] - 61:14 incorporated [1] - 61:15 incorrectly [1] - 60:1 increased [1] - 29:12 indefinite [2] - 19:4, 19:11, 19:14, 19:20, 20:9, 20:25, 21:4, 46:22, 53:4, 53:6, 53:9, 53:11, 53:20, 57:2, 57:7, 57:9, 57:24, 58:11, 61:6, 62:24 indefiniteness [6] - 21:7, 57:11, 57:14, 58:23, 67:9 independently [2] - 75:10, 75:11 indestructible [1] - 29:3 Indiana [1] - 77:15 Indianapolis [2] - 1:21, 77:15 indicating [1] - 38:1 indication [1] - 34:25 individual [3] - 22:5, 57:4, 57:21 indulgence [1] - 8:19 inexpensive [1] - 71:9 inflicted [1] - 72:17 informal [1] - 71:20 infringe [5] - 32:23, 33:17, 33:19, 35:11, 44:1 infringed [2] - 7:24, 60:13 infringement [13] - 4:25, 8:14, 8:21, 9:17, 11:9, 26:24, 27:3, 44:7, 44:11, 57:6, 57:23, 73:14, 73:21 infringes [1] - 43:3 infringing [8] - 7:21, 8:5, 8:22, 8:23, 28:3, 28:10, 29:21, 40:17 initial [1] - 22:21 inserted [1] - 31:1 inside [3] - 26:12, 29:5, 29:6 instance [4] - 26:21, 27:4, 45:10, 46:1 instructive [1] - 57:1 intend [1] - 23:3 intended [3] - 10:24, 19:9, 67:13 intent [1] - 29:22 interesting [3] - 38:15, 61:20, 77:13 intermediate [3] - 11:12, 65:1, 65:3 interpret [2] - 19:20, 65:17 interpretation [9] - 16:8, 18:22, 19:12, 25:4, 25:6, 25:19, 29:18, 34:2, 62:24 interpretations [1] - 12:18 interpreted [3] - 5:4, 11:16, 52:7	interpreting [5] - 13:7, 13:23, 27:10, 52:11, 64:13 introduce [1] - 4:9 introductions [1] - 4:5 invention [27] - 5:3, 8:24, 10:22, 11:4, 11:16, 12:5, 12:13, 12:23, 22:11, 22:14, 24:23, 26:23, 27:16, 28:5, 28:21, 29:8, 29:22, 30:1, 30:22, 32:2, 32:3, 33:8, 33:24, 36:8, 40:12, 45:11, 45:20 inventors [4] - 12:1, 12:4, 27:14, 30:7 invite [2] - 4:5, 6:3 involved [1] - 72:19 irregular [1] - 50:10 irregularly [2] - 20:5, 20:18 issue [35] - 5:9, 8:12, 9:21, 11:9, 12:22, 13:10, 14:9, 15:17, 18:16, 19:23, 20:19, 20:20, 37:16, 38:16, 46:21, 46:23, 48:21, 51:18, 53:3, 54:13, 55:15, 55:17, 55:19, 55:20, 57:12, 58:24, 58:25, 64:9, 65:16, 67:7, 71:17, 73:17, 75:15 issued [4] - 42:4, 42:10, 60:16, 61:9 issues [7] - 43:13, 54:9, 57:14, 64:7, 68:20, 71:12, 79:3 issuing [1] - 12:25 item [1] - 51:19 Items [1] - 9:6 items [1] - 5:3 iterations [1] - 54:13 itself [7] - 11:18, 14:22, 29:8, 42:7, 44:1, 53:15, 65:8	K keep [3] - 29:6, 71:6, 72:14 keeps [4] - 14:16, 31:13, 32:17, 34:13 key [1] - 38:17 kind [4] - 41:22, 57:19, 61:19, 68:18 kit [4] - 27:1, 27:4, 28:9, 52:18 knowledge [1] - 53:18 known [1] - 15:5 knows [1] - 79:2
I	identical [1] - 16:21 identified [2] - 26:22, 61:25 identify [1] - 61:24 identities [1] - 4:6 imagine [2] - 25:15, 36:1 immeasurable [1] - 49:21 immediately [1] - 54:17 impact [3] - 29:2, 35:4, 35:6 impermissibly [4] - 15:7, 15:15, 18:8, 20:12 impervious [8] - 9:22, 9:23, 9:24, 12:2, 32:12, 40:9, 40:11, 65:4 important [1] - 40:1 improper [2] - 8:24, 21:5 impurities [2] - 52:9, 52:11 IN [1] - 1:21 inappropriate [1] - 7:23 INC [1] - 1:7 inclined [4] - 53:25, 54:21, 55:13, 74:5 include [1] - 12:1 included [4] - 28:10, 28:21, 42:4, 42:8 includes [4] - 5:3, 11:6, 14:24, 28:4 including [4] - 12:2, 46:6, 60:8, 70:16 inclusion [1] - 52:8	J Jamestown [5] - 1:14, 76:5, 76:6, 76:20, 77:6 January [1] - 77:12 job [4] - 56:14, 70:9, 71:12, 73:24 John [2] - 1:23, 4:15 Jones [1] - 73:4 JUDGE [1] - 1:11 judge [3] - 69:4, 75:14, 78:25 Judge [4] - 33:15, 35:9, 72:15, 73:4 jump [1] - 19:17 June [1] - 68:5 jurisdiction [1] - 73:2	L language [41] - 12:3, 14:10, 14:14, 15:18, 15:24, 18:17, 20:20, 21:1, 23:22, 25:6, 25:14, 27:7, 27:11, 28:2, 28:7, 28:14, 33:7, 34:3, 36:6, 38:5, 38:12, 38:20, 38:23, 39:2, 39:9, 39:11, 39:18, 39:22, 42:5, 43:9, 44:24, 45:24, 46:10, 46:24, 52:18, 56:14, 58:3, 58:12, 64:10, 64:19, 67:13 larger [26] - 15:21, 16:5, 16:10, 16:16, 16:17, 16:20, 16:23, 17:2, 17:6, 17:14, 17:21, 17:23, 18:2, 18:6, 18:13, 24:18, 44:22, 45:4, 46:3, 46:18, 47:12, 49:16, 67:4 largest [1] - 45:7 last [7] - 24:10, 39:25, 59:2, 64:6, 65:15, 68:12, 76:5 Law [1] - 1:13 law [14] - 25:7, 25:9, 25:10, 25:13, 25:20, 25:21, 27:12, 36:18, 37:15, 63:3, 71:2, 72:16, 74:5, 79:2 layer [67] - 9:22, 9:23, 9:24, 10:6, 10:7, 11:2, 11:12, 11:19, 12:2, 12:12, 12:22, 18:18, 22:12, 23:1, 23:4, 23:5, 23:6, 23:7, 23:23, 23:24, 28:19, 28:20, 29:20, 30:11, 30:12, 30:13, 30:15, 30:16, 30:17, 30:18, 31:12, 31:13, 31:14, 31:15, 32:9, 32:10, 32:22, 33:13, 33:16, 33:18, 33:19, 33:21, 33:23, 34:5, 34:11, 34:14, 34:15, 35:10, 35:14, 35:17, 38:5, 38:6, 38:13, 38:14, 40:6, 40:9, 40:11, 40:19, 64:13, 65:3, 65:4, 65:5, 65:6, 65:11 layered [5] - 7:3, 39:12,

<p>39:19, 40:3, 64:21 layers [27] - 5:12, 6:25, 7:1, 7:13, 9:10, 11:18, 12:2, 12:6, 12:9, 12:13, 12:14, 12:23, 29:17, 30:8, 30:11, 33:2, 33:8, 38:9, 38:13, 40:17, 64:10, 64:14, 64:24, 65:1, 65:9, 65:12 laymen's [1] - 13:25 learn [2] - 25:10 learned [1] - 79:4 least [12] - 14:11, 15:19, 15:21, 36:25, 39:23, 44:20, 44:22, 46:16, 46:18, 48:15, 55:16, 57:1 leave [4] - 65:13, 75:21, 75:22, 79:1 left [4] - 54:25, 72:20, 76:10, 78:18 left-hand [1] - 54:25 legal [3] - 19:25, 36:18, 74:12 less [1] - 20:22 letter [1] - 25:7 license [4] - 8:10, 8:21, 40:20, 63:5 licensed [1] - 60:7 licensing [4] - 41:16, 42:12, 43:12, 60:11 light [8] - 7:23, 18:9, 31:22, 56:21, 56:22, 64:12, 64:23 lighting [1] - 32:22 lights [2] - 32:20, 32:21 likely [2] - 62:25, 71:25 limit [1] - 16:24 limitation [9] - 14:25, 34:18, 44:18, 44:25, 45:6, 46:14, 51:3, 54:12, 58:16 limitations [5] - 20:12, 24:4, 24:5, 24:8, 44:17 limited [7] - 7:20, 11:17, 12:11, 12:22, 14:20, 29:16, 70:20 limiting [1] - 30:8 limits [5] - 16:14, 20:16, 27:6, 29:25 line [1] - 61:12 lines [1] - 50:9 litigation [1] - 75:8 live [2] - 69:2, 76:5 Liz [1] - 72:20 LLP [2] - 1:19, 1:22 local [1] - 4:8 locking [1] - 19:16 look [24] - 5:8, 5:11, 5:17, 6:4, 7:15, 8:13, 8:16, 9:2, 15:9, 15:12, 16:3, 22:19, 30:5, 37:21, 39:4, 46:5, 47:5, 49:3, 53:17, 56:7, 58:1, 58:2, 62:11, 71:9</p>	<p>looking [7] - 12:15, 25:5, 29:15, 73:10, 73:12, 77:3, 77:5 looks [1] - 78:11 LOUISE [1] - 1:10 love [2] - 10:20, 58:2 lower [9] - 5:20, 18:17, 23:5, 23:23, 33:22, 38:6, 38:14, 65:5 lying [1] - 13:18</p> <p style="text-align: center;">M</p> <p>ma'am [1] - 78:22 magistrate [2] - 69:4, 75:14 major [2] - 18:17, 23:5 Malpass [1] - 64:23 manufacture [4] - 42:6, 42:10, 42:11, 61:13 manufactured [3] - 5:25, 8:10, 42:21 manufacturing [4] - 6:2, 11:11, 17:25, 60:6 mark [1] - 72:13 marked [1] - 61:11 market [2] - 42:19, 77:8 marketing [1] - 78:24 Markman [1] - 44:9 material [11] - 11:3, 11:5, 29:3, 34:21, 35:5, 35:16, 35:19, 35:22, 53:19, 53:25 materials [4] - 28:11, 52:8, 55:18, 64:25 matter [5] - 4:3, 25:22, 37:15, 46:20, 73:13 McDonald's [1] - 78:6 McGurk [1] - 2:1 mean [15] - 11:17, 13:24, 14:5, 14:6, 31:25, 32:18, 33:19, 37:14, 39:22, 51:6, 53:6, 53:8, 58:14, 63:2 meaning [7] - 13:15, 13:16, 14:5, 14:8, 20:1, 20:2, 20:9 meaningless [1] - 67:21 means [15] - 13:4, 13:11, 13:17, 14:7, 14:14, 14:18, 20:4, 23:7, 23:25, 34:3, 36:15, 39:15, 53:11, 63:4 measurable [22] - 14:21, 14:25, 15:6, 15:16, 20:10, 20:15, 20:17, 48:18, 48:22, 49:1, 49:7, 49:9, 49:10, 49:18, 50:10, 50:15, 51:2, 51:6, 51:15 measure [4] - 15:11, 18:20, 67:8, 67:10 measured [1] - 49:14 measurements [1] - 55:25 measures [2] - 55:22, 59:13</p>	<p>measuring [2] - 51:8, 56:6 mechanical [1] - 2:23 mediation [2] - 70:17, 70:21 mediator [4] - 69:5, 69:13, 70:3, 70:9 meet [2] - 24:8, 58:15 meeting [2] - 77:11, 77:18 memento [1] - 72:14 memorable [1] - 72:18 mentioned [4] - 21:6, 22:12, 55:9, 60:15 merely [1] - 34:8 Meridian [1] - 1:20 met [3] - 58:8, 58:20 metal [2] - 29:1, 35:18 method [11] - 42:11, 53:14, 53:15, 53:24, 55:7, 55:17, 56:2, 56:3, 56:6, 59:5, 60:17 methodology [6] - 57:4, 57:21, 58:5, 58:7, 58:10, 58:18 microscope [1] - 50:4 Middle [1] - 2:1 middle [2] - 32:8, 34:5 middlemen [1] - 42:22 might [8] - 22:4, 31:17, 34:4, 50:2, 50:14, 70:20, 77:3 MILGATE [60] - 5:19, 6:22, 7:18, 8:2, 8:18, 21:13, 21:18, 21:22, 22:9, 26:1, 26:4, 26:7, 26:10, 26:14, 27:22, 36:11, 37:4, 37:10, 37:20, 40:15, 40:18, 41:3, 41:6, 41:9, 41:15, 41:24, 43:21, 44:8, 44:16, 47:10, 47:21, 48:8, 48:20, 48:23, 49:8, 49:11, 49:22, 50:12, 53:10, 53:23, 54:6, 57:10, 58:2, 59:15, 61:21, 62:4, 63:8, 63:13, 66:7, 66:23, 69:9, 70:4, 72:25, 73:11, 74:1, 74:11, 75:22, 77:15, 77:18, 78:9 Milgate [2] - 1:20, 4:18 mimic [1] - 56:16 minimum [2] - 61:16 minute [1] - 65:24 misreading [1] - 57:25 misrepresenting [1] - 42:16 miss [2] - 62:17, 63:21 missed [1] - 53:2 misspeaking [1] - 51:21 misspoke [1] - 27:20 mode [1] - 62:15 moment [1] - 54:10 money [3] - 70:1, 71:4, 71:7 morning [4] - 4:2, 4:7, 4:12, 4:15</p>	<p>morph [1] - 50:1 most [3] - 13:6, 25:8, 72:18 mother [1] - 77:2 motion [1] - 73:1 mouthful [1] - 24:14 move [1] - 13:8 moved [1] - 10:16 MOYE [3] - 4:15, 77:21, 77:25 Moye [2] - 1:23, 4:16 MR [83] - 4:7, 4:12, 4:15, 4:22, 5:22, 6:7, 6:10, 6:14, 6:17, 6:21, 7:4, 7:8, 7:12, 7:17, 8:4, 8:25, 9:8, 9:19, 10:1, 10:5, 10:11, 10:14, 10:16, 13:10, 17:4, 17:16, 21:9, 26:12, 27:9, 27:24, 31:3, 32:10, 33:18, 34:7, 34:16, 34:24, 35:4, 35:15, 41:20, 42:1, 42:3, 43:1, 43:3, 43:7, 43:16, 50:17, 51:9, 52:16, 53:1, 59:18, 60:20, 60:23, 61:1, 62:19, 63:19, 64:4, 66:15, 66:18, 67:23, 68:9, 68:13, 68:17, 69:17, 69:23, 72:4, 72:8, 72:14, 72:15, 74:18, 75:24, 76:4, 76:8, 76:11, 76:14, 76:19, 76:24, 77:5, 77:10, 77:21, 77:25, 78:5, 78:11, 78:14 MS [60] - 5:19, 6:22, 7:18, 8:2, 8:18, 21:13, 21:18, 21:22, 22:9, 26:1, 26:4, 26:7, 26:10, 26:14, 27:22, 36:11, 37:4, 37:10, 37:20, 40:15, 40:18, 41:3, 41:6, 41:9, 41:15, 41:24, 43:21, 44:8, 44:16, 47:10, 47:21, 48:8, 48:20, 48:23, 49:8, 49:11, 49:22, 50:12, 53:10, 53:23, 54:6, 57:10, 58:2, 59:15, 61:21, 62:4, 63:8, 63:13, 66:7, 66:23, 69:9, 70:4, 72:25, 73:11, 74:1, 74:11, 75:22, 77:15, 77:18, 78:9 Multilayer [1] - 36:21 multiple [11] - 12:9, 12:12, 12:13, 12:22, 14:19, 30:10, 30:11, 64:13, 65:9, 65:12, 67:7 must [9] - 13:24, 16:9, 16:15, 17:1, 17:13, 18:11, 18:12, 20:15, 65:19</p> <p style="text-align: center;">N</p> <p>N-o-r-i-a-n [1] - 27:23 nail [1] - 37:18 names [1] - 46:11</p>
---	---	---	---

<p>narrow [9] - 18:8, 24:23, 31:19, 40:8, 45:10, 45:14, 45:20, 51:17, 66:22</p> <p>narrowed [5] - 23:12, 38:18, 39:5, 39:7, 39:18</p> <p>narrows [3] - 15:7, 15:15, 33:7</p> <p>Nature [1] - 27:18</p> <p>nature [1] - 75:16</p> <p>Nautilus [1] - 58:13</p> <p>NC [2] - 1:18, 2:2</p> <p>NE [1] - 1:23</p> <p>near [2] - 13:18, 14:7</p> <p>necessarily [2] - 13:19, 13:24</p> <p>necessary [4] - 63:9, 70:21, 73:24, 75:1</p> <p>need [12] - 5:4, 15:11, 31:24, 35:18, 37:15, 49:14, 63:5, 71:15, 75:14, 76:22, 78:2, 78:7</p> <p>needs [3] - 53:5, 75:19, 78:25</p> <p>neighbor's [1] - 13:20</p> <p>neighborhood [1] - 76:5</p> <p>never [2] - 34:25, 70:24</p> <p>new [4] - 19:15, 30:15, 30:16, 36:13</p> <p>New [2] - 1:5, 2:2</p> <p>next [8] - 14:9, 15:17, 18:16, 19:23, 38:21, 43:14, 43:17, 70:15</p> <p>nice [1] - 76:23</p> <p>non [12] - 11:14, 11:19, 14:16, 17:12, 22:23, 28:19, 29:13, 31:16, 33:20, 33:22, 38:12, 61:13</p> <p>non-skid [9] - 11:14, 14:16, 22:23, 28:19, 29:13, 31:16, 33:20, 38:12, 61:13</p> <p>non-slip [3] - 11:19, 17:12, 33:22</p> <p>Norian [9] - 27:23, 29:24, 30:24, 31:5, 31:22, 32:24, 33:6, 52:16, 52:20</p> <p>NORTH [1] - 1:1</p> <p>North [2] - 1:5, 4:16</p> <p>notereading [1] - 2:24</p> <p>notes [1] - 26:19</p> <p>nothing [17] - 14:22, 14:23, 14:24, 16:12, 16:13, 16:14, 20:13, 20:16, 29:17, 29:21, 32:6, 65:7, 65:8, 72:4, 75:2, 75:5, 75:11</p> <p>notice [1] - 25:15</p> <p>November [1] - 61:24</p> <p>nowhere [3] - 51:3, 51:4</p> <p>Number [1] - 68:5</p> <p>number [16] - 4:25, 34:17, 34:18, 45:15, 47:8, 50:21,</p>	<p>60:1, 60:2, 61:4, 61:6, 63:5, 74:18, 74:20, 74:24, 75:3, 75:5</p> <p>numbers [1] - 26:3</p> <p style="text-align: center;">O</p> <p>objection [1] - 7:19</p> <p>objections [1] - 30:9</p> <p>obtain [1] - 47:16</p> <p>obviously [5] - 13:3, 35:25, 40:23, 73:20, 74:1</p> <p>occur [1] - 65:23</p> <p>OF [2] - 1:1, 1:10</p> <p>of [3] - 36:24, 52:5, 52:7</p> <p>offering [1] - 60:21</p> <p>Office [9] - 12:1, 12:4, 12:21, 22:18, 23:16, 27:14, 42:9, 46:5</p> <p>old [3] - 35:20, 36:25, 77:18</p> <p>once [2] - 11:20, 42:11</p> <p>one [76] - 4:22, 5:1, 5:10, 5:16, 5:21, 6:12, 6:15, 6:25, 7:19, 8:19, 10:18, 10:25, 11:25, 12:5, 15:3, 15:8, 15:12, 15:13, 16:3, 17:12, 17:19, 17:20, 17:23, 18:2, 18:3, 18:11, 18:12, 21:7, 23:3, 24:25, 25:1, 25:8, 26:21, 28:25, 29:2, 29:3, 29:19, 30:4, 34:17, 44:1, 45:7, 47:11, 47:22, 48:12, 49:5, 49:15, 49:18, 50:21, 51:19, 51:23, 52:15, 54:16, 56:17, 58:8, 58:11, 59:10, 60:2, 61:4, 62:12, 64:4, 66:16, 66:17, 67:10, 67:18, 67:19, 67:20, 70:3, 71:25, 74:18, 75:4, 78:18</p> <p>ones [4] - 18:5, 45:3, 47:12, 54:12</p> <p>open [3] - 37:7, 38:2, 78:17</p> <p>open-ended [1] - 37:7</p> <p>opened [2] - 5:11, 25:20</p> <p>opening [11] - 4:20, 7:6, 9:4, 12:11, 22:1, 31:11, 37:22, 44:14, 59:6, 59:21, 64:15</p> <p>opinion [6] - 33:16, 73:6, 73:13, 73:16, 73:18, 73:19</p> <p>opinions [2] - 48:25, 73:6</p> <p>opportunity [4] - 63:10, 63:12, 69:3, 74:6</p> <p>opposed [2] - 42:17, 52:14</p> <p>opposing [2] - 51:22, 61:10</p> <p>opposite [2] - 16:19, 39:17</p> <p>oral [1] - 73:8</p> <p>orange [3] - 5:24, 6:1, 6:13</p> <p>order [11] - 5:6, 8:6, 14:1,</p>	<p>17:10, 20:15, 23:14, 24:15, 29:17, 63:21, 68:24, 70:13</p> <p>ordinarily [2] - 52:9, 58:18</p> <p>ordinary [21] - 11:1, 13:14, 13:16, 14:4, 14:8, 15:4, 15:11, 20:1, 20:2, 25:16, 39:2, 49:18, 54:17, 56:17, 58:9, 58:11, 59:10, 60:4, 61:6, 62:12, 74:12</p> <p>Ordinary [1] - 61:16</p> <p>originally [1] - 8:9</p> <p>ornament [1] - 72:18</p> <p>otherwise [1] - 27:6</p> <p>outlined [1] - 38:16</p> <p>outside [7] - 28:12, 28:17, 30:14, 31:7, 32:1, 33:3, 46:25</p> <p>outstanding [2] - 43:10, 73:1</p> <p>overall [1] - 44:24</p> <p>owner [1] - 78:19</p> <p style="text-align: center;">P</p> <p>P.A [1] - 1:16</p> <p>p.m [1] - 79:7</p> <p>packaged [1] - 6:15</p> <p>pad [3] - 11:15, 22:24, 38:13</p> <p>page [3] - 21:24, 45:25, 64:16</p> <p>Page [1] - 3:4</p> <p>pages [3] - 21:21, 21:23, 22:7</p> <p>paid [1] - 40:20</p> <p>paint [4] - 10:9, 34:13, 34:20, 35:2</p> <p>painting [1] - 10:24</p> <p>paper [6] - 53:16, 53:22, 54:16, 55:18, 56:5, 61:18</p> <p>parameters [3] - 24:6, 24:7, 54:8</p> <p>pardon [1] - 58:22</p> <p>part [9] - 7:4, 15:8, 28:4, 28:21, 34:17, 47:7, 53:15, 57:14, 68:6</p> <p>partial [1] - 78:6</p> <p>particular [2] - 19:10, 66:6</p> <p>parties [3] - 49:13, 57:3, 74:24</p> <p>party [1] - 69:4</p> <p>past [1] - 40:20</p> <p>Patent [13] - 4:10, 12:1, 12:4, 12:21, 22:17, 23:15, 23:16, 27:14, 42:9, 46:5, 52:6, 64:23, 68:5</p> <p>patent [57] - 4:25, 5:3, 8:10, 8:12, 9:21, 10:23, 11:10, 12:17, 12:25, 13:4, 13:7,</p>	<p>14:18, 14:22, 15:23, 16:1, 16:18, 23:13, 23:14, 24:15, 24:19, 25:9, 25:10, 25:13, 27:10, 28:13, 28:22, 38:12, 40:4, 40:5, 42:4, 42:6, 42:8, 42:10, 43:4, 45:17, 46:10, 47:7, 47:16, 54:24, 55:5, 55:21, 57:7, 57:24, 59:5, 60:8, 60:15, 61:9, 61:12, 62:3, 62:5, 62:9, 63:2, 64:24, 65:8, 67:1, 75:8</p> <p>patentable [3] - 23:17, 24:24, 47:18</p> <p>patented [2] - 22:20, 28:24</p> <p>Peachtree [1] - 1:23</p> <p>people [1] - 5:4</p> <p>percent [1] - 37:11</p> <p>perhaps [6] - 5:6, 35:9, 35:22, 51:22, 63:11, 72:11</p> <p>perimeter [7] - 14:21, 15:6, 15:16, 20:10, 20:17, 48:19, 50:15</p> <p>Person [1] - 61:16</p> <p>person [4] - 15:11, 25:16, 60:4, 61:6</p> <p>phase [2] - 43:14, 43:17</p> <p>phrase [1] - 36:23</p> <p>pick [2] - 17:11, 67:18</p> <p>picture [1] - 55:1</p> <p>Pie [1] - 77:6</p> <p>piece [2] - 54:4, 72:7</p> <p>pieces [1] - 53:16</p> <p>pile [1] - 42:21</p> <p>pincite [1] - 64:17</p> <p>pinpoint [1] - 64:17</p> <p>pithy [1] - 51:14</p> <p>pizza [1] - 77:5</p> <p>place [3] - 30:12, 76:23, 78:17</p> <p>placed [2] - 18:19, 55:4</p> <p>placing [1] - 53:25</p> <p>plain [4] - 25:6, 25:14, 37:22, 39:2</p> <p>plaintiff [9] - 4:21, 21:17, 23:12, 33:15, 40:17, 50:13, 59:6, 72:2, 73:7</p> <p>Plaintiff [1] - 1:5</p> <p>Plaintiff's [8] - 3:6, 3:8, 60:22, 60:24, 68:4, 72:7, 72:9, 72:13</p> <p>plaintiff's [4] - 25:13, 49:3, 64:15, 73:7</p> <p>Plaintiffs [1] - 1:13</p> <p>plaintiffs [9] - 4:6, 9:20, 22:10, 22:22, 24:23, 39:5, 39:14, 40:10, 59:3</p> <p>plaintiffs' [3] - 39:21, 45:8, 54:24</p> <p>plane [3] - 53:25, 54:21, 77:16</p>
---	---	---	---

<p>plastic [3] - 10:8, 31:14, 32:10</p> <p>plate [1] - 63:5</p> <p>pleasure [1] - 4:13</p> <p>plural [1] - 45:1</p> <p>Plus [7] - 6:24, 40:14, 40:24, 41:11, 42:18, 43:9, 48:2</p> <p>ply [6] - 7:25, 8:1, 8:3, 9:18, 10:3</p> <p>PO [1] - 1:17</p> <p>Point [1] - 76:8</p> <p>point [19] - 5:23, 22:6, 24:22, 24:25, 38:24, 39:25, 44:1, 44:3, 49:12, 51:13, 53:9, 56:19, 59:2, 60:20, 64:6, 66:24, 70:18, 71:15, 74:2</p> <p>pointed [5] - 12:9, 30:5, 47:5, 64:11, 64:16</p> <p>points [5] - 38:17, 43:22, 59:9, 63:22, 64:1</p> <p>Pollack [2] - 1:20, 4:18</p> <p>POLLACK [60] - 5:19, 6:22, 7:18, 8:2, 8:18, 21:13, 21:18, 21:22, 22:9, 26:1, 26:4, 26:7, 26:10, 26:14, 27:22, 36:11, 37:4, 37:10, 37:20, 40:15, 40:18, 41:3, 41:6, 41:9, 41:15, 41:24, 43:21, 44:8, 44:16, 47:10, 47:21, 48:8, 48:20, 48:23, 49:8, 49:11, 49:22, 50:12, 53:10, 53:23, 54:6, 57:10, 58:2, 59:15, 61:21, 62:4, 63:8, 63:13, 66:7, 66:23, 69:9, 70:4, 72:25, 73:11, 74:1, 74:11, 75:22, 77:15, 77:18, 78:9</p> <p>Pollack-Milgate [2] - 1:20, 4:18</p> <p>POLLACK-MILGATE [60] - 5:19, 6:22, 7:18, 8:2, 8:18, 21:13, 21:18, 21:22, 22:9, 26:1, 26:4, 26:7, 26:10, 26:14, 27:22, 36:11, 37:4, 37:10, 37:20, 40:15, 40:18, 41:3, 41:6, 41:9, 41:15, 41:24, 43:21, 44:8, 44:16, 47:10, 47:21, 48:8, 48:20, 48:23, 49:8, 49:11, 49:22, 50:12, 53:10, 53:23, 54:6, 57:10, 58:2, 59:15, 61:21, 62:4, 63:8, 63:13, 66:7, 66:23, 69:9, 70:4, 72:25, 73:11, 74:1, 74:11, 75:22, 77:15, 77:18, 78:9</p> <p>position [12] - 17:4, 17:9, 19:3, 19:8, 20:11, 20:24, 21:1, 33:4, 49:11, 69:18, 74:3, 74:16</p>	<p>positions [1] - 74:14</p> <p>possession [1] - 62:21</p> <p>possibly [1] - 10:11</p> <p>potentially [6] - 22:4, 28:3, 50:4, 62:6, 70:6, 74:21</p> <p>pour [1] - 34:19</p> <p>practiced [1] - 77:21</p> <p>practicing [1] - 75:8</p> <p>pre [1] - 6:12</p> <p>preamble [2] - 39:11, 64:19</p> <p>precise [2] - 39:17, 46:10</p> <p>prepared [1] - 62:1</p> <p>presentation [1] - 21:14</p> <p>presented [1] - 71:13</p> <p>Presidio [1] - 56:24</p> <p>presumably [1] - 28:6</p> <p>presumption [1] - 36:22</p> <p>pretty [1] - 36:1</p> <p>previous [1] - 45:21</p> <p>primarily [1] - 70:17</p> <p>privilege [1] - 73:15</p> <p>problem [8] - 22:16, 51:1, 52:21, 53:19, 54:19, 54:20, 58:8, 67:9</p> <p>problematic [1] - 10:19</p> <p>problems [1] - 45:7</p> <p>procedure [8] - 18:16, 18:24, 19:2, 19:9, 21:3, 34:8, 56:4</p> <p>procedures [2] - 61:15, 68:7</p> <p>Proceedings [1] - 2:23</p> <p>process [9] - 6:3, 30:3, 37:13, 37:14, 44:9, 54:21, 57:15, 61:23, 71:3</p> <p>processes [1] - 17:25</p> <p>produced [2] - 2:24, 6:16</p> <p>product [23] - 6:23, 7:21, 7:24, 19:10, 30:9, 40:4, 40:19, 40:25, 41:12, 42:6, 42:7, 42:8, 43:24, 44:5, 44:6, 44:12, 44:15, 46:25, 48:7, 48:9, 60:12, 65:10</p> <p>production [1] - 60:16</p> <p>products [8] - 6:25, 8:5, 8:20, 8:22, 40:21, 45:5, 48:2, 60:17</p> <p>projecting [6] - 14:11, 15:2, 46:15, 48:14, 48:18, 49:4</p> <p>proofing [1] - 28:25</p> <p>proper [8] - 19:18, 44:9, 57:3, 57:20, 59:24, 62:8, 76:6, 76:21</p> <p>properly [2] - 17:10, 75:3</p> <p>properties [4] - 31:16, 32:23, 33:20, 35:5</p> <p>proportion [1] - 67:11</p> <p>proposals [1] - 70:14</p> <p>proposed [7] - 13:18, 15:1, 15:25, 19:3, 20:4, 20:8,</p>	<p>69:16</p> <p>proposition [2] - 36:19, 74:4</p> <p>propositions [1] - 25:8</p> <p>prosecuted [1] - 63:3</p> <p>prosecution [28] - 11:9, 11:24, 12:7, 12:17, 12:19, 12:24, 14:24, 16:14, 23:11, 25:5, 25:18, 30:6, 30:8, 33:10, 38:16, 39:4, 39:9, 39:16, 40:2, 47:14, 51:4, 61:9, 64:18, 65:7, 65:21, 67:12</p> <p>protect [1] - 10:25</p> <p>protective [3] - 11:14, 22:23, 38:12</p> <p>provide [4] - 4:23, 10:25, 37:15, 74:7</p> <p>provided [2] - 20:3, 20:6</p> <p>PTAB [1] - 52:11</p> <p>publicly [2] - 18:25, 59:23</p> <p>Pug [1] - 76:25</p> <p>pulled [1] - 58:18</p> <p>purely [1] - 9:11</p> <p>purpose [2] - 8:15, 63:1</p> <p>purposes [3] - 10:24, 35:17, 47:23</p> <p>push [1] - 70:19</p> <p>Put [16] - 6:24, 40:14, 40:16, 40:24, 41:2, 41:11, 41:23, 42:17, 42:18, 42:25, 43:9, 43:24, 43:25, 45:5, 48:1</p> <p>put [8] - 4:6, 29:19, 32:11, 44:10, 49:9, 69:1, 70:16, 72:12</p> <p>puts [1] - 46:25</p> <p>putting [3] - 25:15, 44:4, 74:14</p>	<p>rather [1] - 19:13</p> <p>reach [3] - 34:11, 48:4, 48:10</p> <p>reaction [1] - 31:6</p> <p>read [13] - 8:11, 17:9, 18:9, 20:12, 25:10, 33:23, 36:22, 39:16, 56:20, 56:21, 58:4, 59:7</p> <p>readily [1] - 15:10</p> <p>reading [3] - 7:23, 37:22, 56:16</p> <p>reads [6] - 17:16, 17:17, 18:14, 18:15, 25:17, 67:24</p> <p>ready [1] - 70:10</p> <p>reaffirmed [2] - 36:25, 38:4</p> <p>reagent [1] - 31:6</p> <p>real [2] - 11:3, 38:24</p> <p>really [19] - 10:16, 23:8, 38:15, 39:15, 39:21, 40:1, 40:25, 45:24, 49:1, 51:19, 55:16, 57:8, 59:3, 60:3, 63:25, 64:6, 70:20, 73:10, 73:23</p> <p>reason [8] - 7:14, 13:14, 42:14, 42:15, 48:1, 51:12, 61:8, 77:10</p> <p>reasonable [1] - 58:13</p> <p>reasons [3] - 15:8, 33:5, 60:2</p> <p>received [2] - 59:8, 70:11</p> <p>recitation [3] - 39:12, 60:8, 64:20</p> <p>recited [1] - 52:9</p> <p>record [6] - 4:6, 6:23, 7:2, 15:10, 34:17, 35:1</p> <p>recorded [1] - 2:23</p> <p>refer [2] - 22:7, 45:9</p> <p>reference [3] - 43:18, 61:14, 68:6</p> <p>referred [3] - 26:17, 57:18, 75:15</p> <p>referring [3] - 21:14, 27:18, 51:24</p> <p>refers [1] - 44:25</p> <p>reflect [2] - 71:8, 72:11</p> <p>regard [3] - 44:15, 50:9, 65:15</p> <p>regardless [1] - 11:21</p> <p>regards [6] - 11:13, 12:8, 12:21, 30:10, 42:17, 65:18</p> <p>rejected [3] - 38:20, 42:9, 64:22</p> <p>rejection [1] - 45:19</p> <p>rejections [5] - 12:8, 12:12, 12:25, 33:12</p> <p>related [7] - 27:16, 32:2, 40:11, 41:10, 42:25, 73:14, 73:16</p> <p>relating [1] - 73:8</p> <p>relation [1] - 40:1</p>
		Q	
		<p>questions [2] - 21:10, 21:11</p> <p>quick [2] - 48:11, 63:25</p> <p>quickly [5] - 13:13, 48:4, 51:20, 64:6, 64:17</p> <p>quite [1] - 53:6</p> <p>quoted [1] - 38:11</p>	
		R	
		<p>raise [2] - 57:13, 59:2</p> <p>raised [2] - 59:9, 62:8</p> <p>Raleigh [4] - 1:18, 77:22, 77:25, 78:3</p> <p>random [1] - 67:19</p> <p>rate [3] - 55:11, 55:12</p>	

<p>relationships [1] - 47:9 relative [1] - 17:19 relevant [1] - 7:22 relied [1] - 73:20 relying [2] - 8:6, 12:8 remain [1] - 48:9 remember [1] - 26:18 remind [3] - 37:2, 43:2, 69:7 remiss [1] - 71:7 renders [2] - 53:20, 58:10 repair [1] - 52:18 reply [3] - 12:10, 58:22 report [1] - 69:7 Reporter [1] - 2:1 require [2] - 65:23, 67:18 required [5] - 24:23, 45:6, 45:10, 45:14, 45:19 requiring [2] - 44:19, 46:14 resilient [10] - 18:18, 22:13, 23:5, 38:6, 38:14, 45:16, 50:1, 65:5, 67:21 resolution [3] - 48:4, 48:11, 69:1 resolve [1] - 58:25 resolved [1] - 43:13 respect [6] - 22:21, 24:6, 36:15, 44:18, 46:24, 59:9 respectful [1] - 71:2 respectively [1] - 16:21 respond [4] - 36:10, 62:1, 68:23, 75:23 responded [1] - 59:3 response [5] - 13:1, 45:18, 59:9, 66:5 responses [2] - 30:10, 33:12 responsive [1] - 75:11 rest [1] - 53:25 restaurant [2] - 76:2, 78:19 restriction [2] - 52:5, 52:6 result [2] - 19:2, 48:6 results [2] - 21:3, 56:17 review [2] - 11:23, 63:20 revolves [1] - 10:22 rewrite [1] - 56:14 rightfully [1] - 72:21 RMR [1] - 2:1 Road [3] - 1:14, 1:23, 76:5 road [2] - 19:19, 71:17 ROBERT [1] - 1:4 rolling [1] - 71:6 rubber [3] - 11:5, 35:17, 65:6 Rule [1] - 71:8 ruling [2] - 69:20, 75:17 runs [1] - 50:24</p>	<p style="text-align: center;">S</p> <p>safe [1] - 79:5 sake [1] - 5:13 sales [1] - 43:11 Sandra [2] - 71:23, 72:21 save [1] - 71:3 scenario [1] - 26:21 schedule [1] - 63:16 scheduling [1] - 63:23 scope [22] - 11:16, 11:22, 13:4, 15:7, 18:8, 28:12, 28:17, 28:21, 28:22, 30:14, 30:23, 31:7, 32:1, 33:3, 36:2, 36:7, 46:25, 49:20, 56:2, 58:19, 62:2, 73:8 second [6] - 13:10, 16:6, 39:1, 44:3, 46:22, 54:18 see [22] - 5:12, 9:9, 9:11, 15:12, 24:22, 32:8, 32:21, 37:21, 38:21, 39:4, 45:15, 46:2, 46:4, 51:12, 52:22, 55:25, 56:8, 58:5, 62:11, 72:19, 74:9, 77:2 seeing [1] - 21:17 seeking [2] - 73:15, 73:23 seem [1] - 49:12 sell [1] - 41:1 selling [2] - 11:11, 41:23 sense [5] - 22:4, 40:10, 49:24, 56:14, 65:20 sentence [1] - 70:16 serve [1] - 63:1 set [2] - 36:23, 67:14 settle [1] - 52:24 settled [1] - 25:8 settlement [1] - 69:7 several [1] - 66:25 severely [1] - 51:18 shape [6] - 20:10, 20:15, 20:18, 49:22, 50:10, 51:15 shaped [2] - 20:5, 20:18 shapes [1] - 45:13 sheet [2] - 32:22, 35:18 shooting [1] - 63:20 short [3] - 4:22, 58:3, 63:11 shorter [2] - 47:12, 66:17 show [1] - 55:6 shown [3] - 21:19, 45:22, 54:24 shows [6] - 11:24, 28:2, 39:17, 47:6, 55:1, 65:9 shut [1] - 64:1 side [8] - 29:1, 29:2, 29:3, 30:20, 54:25, 69:2, 75:16 signaling [1] - 28:2 signals [1] - 27:11 simply [5] - 15:1, 20:18, 32:10, 62:20</p>	<p>Simulation [1] - 27:18 single [8] - 13:6, 18:18, 19:23, 23:23, 23:24, 38:5, 38:6, 38:23 sit [4] - 24:25, 48:13, 59:24, 63:8 sitting [1] - 42:20 sized [2] - 17:19, 65:24 sizes [18] - 11:6, 14:12, 14:20, 15:20, 15:22, 17:5, 44:20, 44:22, 45:2, 45:13, 45:15, 46:17, 46:19, 48:16, 48:19, 66:9, 66:11, 66:14 ski [1] - 19:17 skid [9] - 11:14, 14:16, 22:23, 28:19, 29:13, 31:16, 33:20, 38:12, 61:13 skill [11] - 5:4, 25:16, 49:19, 54:17, 56:18, 58:9, 58:11, 59:10, 60:5, 61:7, 62:12 Skill [1] - 61:16 slap [1] - 35:21 sled [5] - 54:22, 55:2, 55:3, 55:6, 55:9 slide [16] - 18:19, 20:22, 23:4, 26:2, 26:14, 38:10, 38:11, 38:17, 38:21, 45:9, 45:21, 45:22, 46:9, 54:24, 54:25, 55:25 Slide [1] - 39:8 sliding [8] - 14:17, 19:16, 31:14, 32:17, 34:10, 55:21, 56:10, 56:11 slip [3] - 11:19, 17:12, 33:22 slope [1] - 19:17 small [3] - 10:19, 24:25, 26:5 smaller [25] - 15:19, 16:3, 16:9, 16:15, 16:20, 16:22, 16:25, 17:6, 17:12, 17:20, 17:22, 18:3, 18:4, 18:11, 24:16, 44:19, 45:2, 46:2, 46:16, 47:13, 65:18, 67:2, 67:3, 67:19 Smith [1] - 1:16 soaked [1] - 35:1 soaking [1] - 34:14 sold [1] - 42:22 solely [1] - 33:13 solid [2] - 29:1, 51:15 someone [1] - 69:16 sometimes [2] - 15:24, 57:15 somewhere [1] - 70:10 soon [1] - 68:23 sorry [6] - 7:8, 26:4, 27:20, 63:19, 67:2 sort [4] - 7:10, 48:4, 50:1, 50:5</p>	<p>sorts [1] - 46:11 sought [2] - 22:20, 22:22 sound [1] - 28:25 soundproof [1] - 29:3 soundproofing [1] - 29:6 sounds [2] - 31:19, 41:20 spaces [1] - 33:22 Spanish [1] - 77:8 spatula [1] - 27:3 speaking [1] - 51:25 speaks [1] - 61:4 specific [7] - 21:2, 23:25, 24:7, 35:17, 35:25, 58:17, 77:2 specifically [7] - 17:18, 17:24, 52:10, 58:22, 59:20, 73:12, 73:17 specification [47] - 14:14, 14:23, 16:2, 16:13, 16:18, 17:17, 17:18, 18:10, 18:15, 18:21, 18:23, 20:14, 20:21, 21:2, 29:4, 32:14, 33:9, 38:8, 40:12, 42:5, 45:12, 46:21, 50:18, 50:19, 51:4, 51:9, 51:11, 53:17, 54:2, 54:5, 54:16, 54:23, 55:1, 55:10, 56:2, 56:16, 56:19, 56:20, 56:22, 58:14, 58:17, 59:7, 66:3, 66:21, 66:24, 67:15, 67:24 specified [1] - 23:23 specify [4] - 23:25, 24:9, 24:11, 24:16 specimen [2] - 55:2 speedy [1] - 71:9 spherical [1] - 47:7 spoken [1] - 53:3 spoon [4] - 28:10, 28:12, 30:2, 52:19 spray [1] - 29:5 spraying [1] - 30:20 squarely [1] - 34:1 St [1] - 2:1 stage [1] - 70:15 standard [3] - 19:25, 61:14, 68:7 start [4] - 4:5, 4:21, 22:9, 78:24 started [4] - 5:24, 6:1, 38:19, 45:11 starts [3] - 50:22, 50:25, 53:13 State [1] - 77:11 state [1] - 50:6 statement [8] - 4:20, 7:7, 9:4, 22:2, 31:11, 37:22, 40:3, 44:14 STATES [2] - 1:1, 1:11 States [1] - 68:5 states [2] - 44:23, 46:13</p>
---	---	---	--

<p>static [4] - 55:22, 56:5, 56:9, 59:13</p> <p>status [1] - 69:11</p> <p>Stay [16] - 6:24, 40:14, 40:16, 40:24, 41:1, 41:11, 41:23, 42:17, 42:18, 42:25, 43:9, 43:24, 43:25, 45:5, 48:1</p> <p>stay [2] - 51:7, 78:14</p> <p>stenography [1] - 2:23</p> <p>Stichter [1] - 46:12</p> <p>stick [1] - 35:22</p> <p>sticker [1] - 72:12</p> <p>stickier [1] - 35:8</p> <p>sticky [2] - 10:7, 14:16</p> <p>still [8] - 13:21, 16:22, 30:17, 30:18, 41:1, 42:19, 43:10, 43:12</p> <p>stir [1] - 28:10</p> <p>stitching [6] - 5:24, 6:2, 6:9, 6:10, 6:13, 24:2</p> <p>stop [2] - 41:4, 75:14</p> <p>stopped [1] - 41:23</p> <p>stops [1] - 50:22</p> <p>story [1] - 24:24</p> <p>straightforward [5] - 5:2, 5:5, 10:22, 22:11, 31:12</p> <p>strangely [1] - 59:8</p> <p>streamers [3] - 29:11, 30:19, 32:5</p> <p>Street [1] - 1:20</p> <p>street [2] - 32:7, 78:17</p> <p>structure [8] - 8:4, 14:15, 14:16, 29:1, 39:13, 39:20, 62:25, 64:21</p> <p>structures [1] - 9:10</p> <p>structuring [1] - 71:19</p> <p>stuck [1] - 77:7</p> <p>stupid [1] - 34:5</p> <p>submit [1] - 63:11</p> <p>subsequently [1] - 69:13</p> <p>substantial [1] - 47:25</p> <p>substantially [2] - 16:21, 40:21</p> <p>substantively [1] - 40:25</p> <p>successful [1] - 69:12</p> <p>suggest [3] - 31:20, 46:14, 69:3</p> <p>suggested [1] - 8:20</p> <p>suggestions [1] - 78:4</p> <p>suggests [1] - 68:24</p> <p>Suite [2] - 1:14, 1:24</p> <p>summarily [1] - 42:9</p> <p>superior [1] - 41:11</p> <p>support [4] - 18:19, 37:16, 54:15, 54:16</p> <p>supported [5] - 14:14, 16:1, 20:6, 33:9, 50:18</p> <p>supports [2] - 14:8, 21:2</p>	<p>supposed [2] - 55:8, 62:8</p> <p>sur [1] - 58:22</p> <p>sur-reply [1] - 58:22</p> <p>surface [21] - 10:7, 11:1, 11:2, 17:12, 18:4, 18:18, 18:19, 23:6, 28:25, 32:16, 32:17, 33:22, 34:8, 34:9, 35:6, 35:8, 35:24, 54:15, 54:16, 54:18</p> <p>surfaces [2] - 28:25, 61:13</p> <p>Systems [1] - 27:18</p> <p style="text-align: center;">T</p> <p>T548 [6] - 18:20, 20:21, 34:6, 34:22, 61:14, 68:7</p> <p>tab [1] - 61:11</p> <p>tackier [1] - 35:19</p> <p>tackiness [2] - 35:16, 35:23</p> <p>talks [2] - 55:21, 58:4</p> <p>taller [5] - 24:17, 45:3, 47:11, 66:16, 67:20</p> <p>tanner [1] - 75:7</p> <p>TAPPI [24] - 18:20, 20:21, 24:4, 24:5, 24:8, 34:6, 34:22, 46:21, 53:12, 53:17, 54:11, 54:15, 54:23, 55:1, 55:8, 55:22, 56:2, 56:3, 56:16, 58:14, 61:5, 61:14, 63:4, 68:7</p> <p>teach [1] - 46:13</p> <p>teaches [2] - 16:19, 59:5</p> <p>Technical [1] - 56:25</p> <p>telephone [2] - 71:19, 71:24</p> <p>term [16] - 11:15, 13:11, 13:15, 15:5, 19:23, 20:1, 20:5, 20:8, 25:24, 27:15, 36:23, 45:8, 52:3, 52:5, 56:11, 74:12</p> <p>terminated [2] - 41:17, 42:12</p> <p>termination [1] - 43:11</p> <p>terms [18] - 5:12, 7:13, 8:14, 9:12, 13:7, 13:14, 13:25, 17:7, 22:4, 41:17, 43:23, 44:10, 58:14, 65:21, 67:7, 69:1, 74:12, 74:14</p> <p>TERRACINO [1] - 1:4</p> <p>Terracino [1] - 4:4</p> <p>Terracinos [6] - 38:17, 40:22, 45:10, 47:15, 73:13, 74:7</p> <p>Terracinos's [3] - 25:12, 55:5, 66:25</p> <p>test [26] - 19:18, 36:13, 36:17, 53:14, 53:15, 53:24, 55:7, 55:17, 56:5, 57:4, 57:21, 58:5, 58:7, 58:16,</p>	<p>58:18, 59:5, 59:7, 59:13, 59:22, 59:23, 59:25, 61:15, 68:7</p> <p>tested [4] - 19:10, 19:16, 20:21, 35:2</p> <p>testifying [3] - 74:22, 75:7</p> <p>testimony [2] - 59:1, 74:25</p> <p>testing [14] - 18:16, 18:24, 19:2, 19:9, 19:15, 20:20, 21:3, 34:8, 35:1, 53:4, 54:18, 60:9, 60:16</p> <p>tests [1] - 34:8</p> <p>THE [130] - 1:10, 4:2, 4:14, 4:19, 6:5, 6:9, 6:12, 6:15, 6:20, 7:6, 7:10, 7:16, 7:25, 8:17, 9:2, 9:7, 9:18, 9:24, 10:3, 10:9, 10:12, 10:15, 13:9, 17:3, 17:15, 21:8, 21:11, 21:16, 21:20, 22:8, 25:23, 26:3, 26:6, 26:9, 26:13, 27:8, 30:25, 32:8, 33:14, 34:4, 34:13, 34:22, 35:3, 35:7, 36:9, 37:2, 37:8, 37:19, 40:13, 40:16, 41:1, 41:4, 41:7, 41:13, 41:22, 42:2, 42:24, 43:2, 43:5, 43:14, 43:20, 44:4, 44:13, 47:3, 47:20, 48:7, 48:12, 48:21, 49:2, 49:10, 49:21, 50:8, 50:13, 51:7, 52:14, 52:21, 53:8, 53:21, 54:3, 56:23, 57:17, 59:12, 59:16, 60:19, 60:21, 61:19, 62:3, 62:17, 63:7, 63:9, 63:15, 64:3, 66:5, 66:11, 66:16, 67:22, 67:25, 68:11, 68:15, 68:18, 69:15, 69:21, 70:2, 70:12, 72:6, 72:11, 72:16, 73:3, 73:22, 74:9, 74:17, 75:13, 75:25, 76:7, 76:9, 76:12, 76:18, 76:22, 77:1, 77:7, 77:13, 77:16, 77:20, 77:23, 78:2, 78:7, 78:13, 78:15, 78:22, 78:23</p> <p>theirs [1] - 5:16</p> <p>themselves [1] - 42:4</p> <p>thereby [1] - 73:14</p> <p>therefore [3] - 19:11, 32:23, 61:5</p> <p>therewith [1] - 52:10</p> <p>thinking [2] - 21:25, 28:23</p> <p>third [6] - 40:6, 40:9, 40:11, 54:20, 67:14, 69:4</p> <p>third-party [1] - 69:4</p> <p>Thornburg [4] - 1:19, 1:22, 4:16, 4:18</p> <p>three [11] - 7:1, 7:3, 8:1, 8:3, 9:18, 23:9, 37:24, 44:5, 66:9, 71:23, 74:24</p> <p>three-layered [1] - 7:3</p>	<p>three-ply [3] - 8:1, 8:3, 9:18</p> <p>three-tiered [1] - 44:5</p> <p>throw [2] - 7:19, 65:25</p> <p>tied [1] - 17:24</p> <p>Tienda [1] - 77:9</p> <p>tier [2] - 48:7, 48:9</p> <p>tiered [3] - 44:5, 44:6, 44:15</p> <p>today [8] - 4:4, 7:5, 21:15, 22:24, 23:19, 24:22, 62:1, 79:5</p> <p>together [2] - 23:10, 71:11</p> <p>tomorrow [2] - 75:17, 77:19</p> <p>tonight [1] - 78:1</p> <p>top [20] - 10:6, 11:2, 11:19, 12:12, 12:22, 22:12, 23:9, 29:14, 30:11, 30:15, 30:17, 31:12, 31:15, 32:16, 33:13, 34:14, 34:20, 35:6, 55:4, 64:13</p> <p>totally [1] - 76:13</p> <p>touch [1] - 69:13</p> <p>touching [2] - 13:19, 13:24</p> <p>towards [1] - 71:14</p> <p>townhouses [1] - 14:2</p> <p>Tracy [1] - 2:1</p> <p>Trade [1] - 4:10</p> <p>tradition [1] - 72:16</p> <p>traditionally [1] - 36:5</p> <p>training [1] - 32:4</p> <p>TRANSCRIPT [1] - 1:10</p> <p>transcript [1] - 2:24</p> <p>transitional [1] - 36:23</p> <p>travels [1] - 79:5</p> <p>treat [1] - 12:5</p> <p>tree [1] - 72:20</p> <p>Tresino [1] - 46:12</p> <p>trial [1] - 71:6</p> <p>triangle [2] - 72:6, 72:21</p> <p>tried [2] - 42:7, 47:15</p> <p>Trimaco [18] - 4:4, 5:21, 5:24, 6:1, 6:6, 8:11, 11:11, 40:19, 40:20, 42:3, 42:15, 42:21, 46:25, 53:11, 60:5, 60:10, 60:15</p> <p>TRIMACO [1] - 1:7</p> <p>Trimaco's [5] - 42:16, 43:25, 49:17, 62:9, 74:3</p> <p>trip [2] - 15:24, 45:24</p> <p>trouble [1] - 78:23</p> <p>truck [2] - 76:24, 77:3</p> <p>true [3] - 27:14, 44:14, 45:5</p> <p>try [4] - 21:23, 24:14, 51:17, 68:25</p> <p>trying [10] - 19:6, 26:18, 31:20, 35:20, 39:22, 51:13, 51:14, 65:17, 66:7, 66:19</p> <p>turnoff [1] - 76:20</p> <p>two [69] - 5:9, 6:6, 6:19, 6:24, 6:25, 7:25, 8:1, 10:1,</p>
---	--	---	---

<p>10:3, 10:16, 10:25, 11:18, 12:6, 12:18, 14:1, 14:11, 15:3, 15:19, 15:21, 17:5, 17:10, 17:19, 18:10, 22:15, 23:10, 28:24, 29:16, 31:1, 31:2, 32:15, 33:5, 33:8, 34:18, 38:8, 38:13, 39:12, 39:19, 40:3, 40:17, 40:19, 41:6, 44:6, 44:15, 44:20, 44:22, 45:1, 46:16, 46:18, 48:7, 48:9, 48:15, 48:19, 48:25, 49:5, 53:16, 55:24, 61:6, 64:6, 64:7, 64:21, 65:24, 66:2, 66:11, 66:14, 71:23, 74:20, 75:5</p> <p>two-layer [1] - 40:19</p> <p>two-layered [4] - 39:12, 39:19, 40:3, 64:21</p> <p>two-ply [3] - 7:25, 8:1, 10:3</p> <p>two-tier [2] - 48:7, 48:9</p> <p>two-tiered [2] - 44:6, 44:15</p> <p>type [1] - 19:10</p>	<p>64:20, 65:9, 71:18, 72:1, 78:8</p> <p>upper [11] - 23:1, 23:4, 23:5, 23:6, 23:7, 23:24, 38:5, 38:13, 65:5, 65:11</p> <p>uses [1] - 56:11</p> <p style="text-align: center;">V</p> <p>VA [1] - 1:15</p> <p>various [1] - 11:6</p> <p>verbatim [1] - 42:5</p> <p>versions [1] - 6:6</p> <p>versus [4] - 22:25, 25:3, 37:16, 56:10</p> <p>view [5] - 44:23, 46:6, 47:19, 48:17, 67:9</p> <p>Virginia [3] - 4:10, 10:17, 77:11</p> <p>virtue [1] - 48:2</p> <p>visit [1] - 76:23</p>	<p>world [1] - 25:15</p> <p>woven [6] - 22:25, 23:4, 23:7, 29:14, 35:5, 38:13</p> <p>wrap [3] - 29:20, 30:18, 31:17</p> <p>write [1] - 68:16</p> <p>writing [1] - 76:22</p> <p>written [2] - 65:22, 73:8</p> <p>wrote [1] - 69:21</p> <p style="text-align: center;">Y</p> <p>yard [1] - 13:21</p> <p>year [1] - 35:20</p> <p>year's [1] - 72:18</p> <p>years [3] - 10:17, 41:6, 77:22</p> <p style="text-align: center;">Z</p> <p>Zegler [6] - 45:14, 45:19, 46:7, 46:12, 47:17, 65:16</p>
<p style="text-align: center;">U</p> <p>U.S [1] - 64:23</p> <p>unable [2] - 47:16, 58:12</p> <p>uncertainty [1] - 19:5</p> <p>undefined [1] - 49:25</p> <p>under [12] - 8:10, 8:20, 25:19, 34:9, 36:18, 44:9, 44:11, 50:4, 54:5, 61:2, 61:23, 69:25</p> <p>underlying [1] - 35:17</p> <p>undermine [2] - 74:15, 76:13</p> <p>underneath [3] - 9:25, 22:13, 55:3</p> <p>understood [4] - 8:25, 27:15, 39:6, 39:18</p> <p>undertake [1] - 70:21</p> <p>unfair [1] - 35:10</p> <p>unfold [1] - 71:3</p> <p>unfortunately [1] - 56:13</p> <p>unintrusive [1] - 26:11</p> <p>UNITED [2] - 1:1, 1:11</p> <p>United [1] - 68:4</p> <p>unless [5] - 13:13, 21:9, 30:14, 50:3, 70:19</p> <p>unlike [1] - 4:25</p> <p>unopened [1] - 5:16</p> <p>unpackaged [1] - 6:12</p> <p>unrecited [1] - 36:24</p> <p>unrelated [1] - 26:23</p> <p>unsupported [1] - 65:20</p> <p>up [20] - 4:3, 7:16, 10:15, 12:17, 23:20, 26:18, 28:2, 35:7, 36:21, 38:25, 39:1, 39:12, 39:19, 43:16, 46:1,</p>	<p style="text-align: center;">W</p> <p>wait [1] - 43:19</p> <p>waived [1] - 57:16</p> <p>waiving [1] - 73:14</p> <p>Wake [1] - 4:8</p> <p>walk [1] - 24:21</p> <p>wall [6] - 28:24, 29:2, 29:5, 29:6, 30:20, 35:21</p> <p>wants [1] - 72:2</p> <p>Ward [1] - 1:16</p> <p>warehouses [1] - 42:20</p> <p>warned [1] - 32:24</p> <p>waste [1] - 70:1</p> <p>waterproof [2] - 29:7, 30:21</p> <p>welcome [2] - 4:19, 19:21</p> <p>well-established [1] - 74:4</p> <p>Wendy's [1] - 78:5</p> <p>WESTERN [1] - 1:2</p> <p>whatsoever [1] - 65:21</p> <p>wheels [1] - 32:4</p> <p>Whereby [2] - 18:17, 20:20</p> <p>wherein [1] - 45:2</p> <p>whiz [1] - 11:3</p> <p>whole [4] - 12:13, 12:23, 30:9, 65:10</p> <p>Williamsburg [3] - 1:15, 10:13, 76:1</p> <p>willing [1] - 69:24</p> <p>Wilmington [1] - 73:4</p> <p>winter [1] - 77:11</p> <p>wish [1] - 15:8</p> <p>withhold [1] - 63:23</p> <p>WOOD [1] - 1:10</p> <p>word [1] - 68:12</p> <p>words [2] - 10:9, 37:14</p>	